

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

THE HON. JUDGE ANDRÉ BIROTTE JR., JUDGE PRESIDING

THUNDER STUDIOS, INC.;)
RODRIC DAVID,)
PlaintiffS,)
vs.) NO. 17-CV-00871-AB
CHARIF KAZAL; TONY KAZAL;)
ADAM KAZAL; AND DOES 1 to 100,)
INCLUSIVE,)
Defendants.)

JURY TRIAL - DAY 2
(1:40 p.m. to 4:32 p.m.)
Los Angeles, California
Thursday, December 6, 2018

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I N D E X

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1 *Los Angeles, California; Thursday, December 6, 2018;*

2 *1:40 p.m.*

3 *-oOo-*

4 THE COURT: All right. Good afternoon. I hope
5 you all had a good lunch.

6 Why don't we call our next witness, please,
7 Counsel.

8 MR. GEBELIN: Plaintiffs call Elizabeth David.

9 THE COURT: All right. Ms. David, you may step
10 forward and be sworn in.

11 ELIZABETH DAVID, PLAINTIFFS' WITNESS, SWORN

12 THE CLERK: Thank you. Please be seated.

13 Please state and spell your name for the record.

14 THE WITNESS: My name is Elizabeth Ann David.

15 THE COURT: Can you spell your last name for the
16 record, please.

17 THE WITNESS: D-a-v-i-d.

18 THE COURT: Mr. Gebelin, you may proceed.

19 MR. GEBELIN: Thank you, Your Honor.

20
21 DIRECT EXAMINATION

22 BY MR. GEBELIN:

23 Q Good afternoon, Ms. David.

24 A Good afternoon.

25 Q Can you please tell us where you live?

1 A I live in West Los Angeles.

2 Q And who lives there with you?

3 A My husband, Rodric David, my two children.

4 Q And can you tell me their ages?

5 A My son is 15, and my daughter is 12.

6 Q And just to be clear, is there any reason why you don't
7 want to tell us their names in court?

8 A I would prefer the Kazal family to have as little
9 information about my family as possible.

10 Q When did you first become aware of the Kazal family?

11 A Probably sometime late 2007, possibly 2008. I know
12 that my father-in-law had introduced my husband to them.
13 But, yes, around 2007, 2008.

14 Q After that time, do you recall your husband entering
15 into some sort of business dealings with them?

16 A Yes. They entered a joint venture together to do a
17 company in the Middle East.

18 Q How did that affect your family?

19 A Well, it affected us quite a bit. We ended up selling
20 our home in Sydney and moving to the Middle East to run the
21 company.

22 Q Was there a point at which the business relationship
23 between your husband and the Kazals soured?

24 A Oh, yes. I mean, almost immediately. We had, as I
25 said, sold our house and moved to the Middle East, and we

1 were funding the business at that stage, even though it was
2 meant to be a 50/50 joint venture. And the Kazals never put
3 their money in. They kept making excuses. "Well, we have
4 to sell this property, and we have to do this, and we have
5 to do that" for why they weren't putting their money in, but
6 we were putting all of our money in.

7 And after 18 months of that, it's an untenable
8 situation. You can't have a partnership when one party is
9 doing all the work and putting all the money in and the
10 other party isn't doing anything.

11 Q When it soured, were there any negative consequences
12 for your family?

13 A How long have you got? Yes, obviously, there have been
14 -- for an 18-month business relationship, I feel like we're
15 still paying a tremendous cost for that -- for that brief
16 business relationship.

17 Q You said -- you mentioned you had moved your family to
18 the Middle East.

19 Did you guys move away from the Middle East after
20 the business deal soured?

21 A We did. We moved back to Sydney for what we thought
22 would be -- we would resettle in Sydney, but some things
23 happened in Australia that we realized that we weren't going
24 to be able to live peacefully in Australia because of the --

25 THE COURT: Counsel, you need to keep asking

1 questions, please.

2 BY MR. GEBELIN:

3 Q So I understand you moved back to Sydney.

4 A Yeah.

5 Q What was it that -- after you moved to Sydney, what was
6 it that made you or your family move away from Sydney again?

7 A Well, there were a couple of incidents. Obviously, the
8 conflict between Rodric and the Kazal brothers was
9 escalating. There were some lawsuits back and forth about
10 the liquidation of the business and what to do moving
11 forward, and there was a lot of acrimony and, in my opinion,
12 a lot of irrational behavior on the part of some of the
13 Kazal brothers where they were following people we knew,
14 confronting them, accosting them in the streets of Sydney.

15 And they also had me followed in 2010 by a private
16 investigator who, after the course of a very long day and
17 three visits to different police stations, the end of that
18 day was when the investigator they hired stole my husband's
19 phone, knocked him over with his car.

20 We were out the front of my children's elementary
21 school -- we were going to the elementary school to tell the
22 principal to be sure that they wouldn't release our children
23 to anyone but us, and we were out front the school when we
24 saw the man that the Kazals had hired again.

25 And my husband went to find him, because he had

1 driven past us and was down the block, and was trying to
2 take video of the car and the license plate so we can figure
3 out who this person was. The man grabbed my husband's phone
4 while his arm was there and then started driving off, which
5 obviously hit my husband with his car, knocked him over --

6 THE COURT: Counsel. You have to ask a question
7 and get an answer from the witness. That's how we do it.
8 Okay?

9 MR. GEBELIN: I understand, Your Honor. I'm
10 trying not to interrupt the witness.

11 THE COURT: Well, ask a question that's not a
12 narrative and elicit the testimony from the witness, please.

13 MR. GEBELIN: Yes, Your Honor.

14 MR. TAYLOR: Your Honor, I have to move to strike
15 those portions of her testimony that are not based on
16 personal knowledge.

17 THE COURT: The objection is overruled.

18 BY MR. GEBELIN:

19 Q I understand this is emotional, Ms. David --

20 A Sorry. I will wait for you to ask the question. I
21 apologize.

22 Q You just mentioned an incident where people were
23 following you in Australia. In response to that incident,
24 did you and your family start making plans to move?

25 A That evening the -- being followed, the police told us

1 that they didn't think it was safe for us to go back to our
2 home in Sydney. They advised me to get a hotel room for us
3 to stay in over the weekend, and they escorted me back to
4 the house so I could get our belongings. That was probably
5 the first weekend that we realized that we would not be able
6 to live in Australia peacefully and started making plans to
7 move to the United States, yes.

8 Q And then some time shortly thereafter, you and your
9 family moved to the United States?

10 A We moved to the United States in late 2011.

11 Q When you moved to the United States, was it your
12 expectation that it would protect you from further incidents
13 like the one you described where you were followed?

14 A A hundred percent. I mean, I'm a U.S. citizen. My
15 children are U.S. citizens. I felt like we should be able
16 to come to the United States and live here without being
17 terrorized by this family who had a long list of, as I said,
18 ever escalating irrational behavior towards us.

19 And unfortunately it followed us here, and that's
20 why we're sitting here today.

21 Q So you moved here in 2011.

22 I want to move forward a little bit to 2016, which
23 is some of the events that we're about -- that this case is
24 about here.

25 Do you remember in October 2016 anything that

1 happened to change your opinion of whether or not you were
2 still safe from the Kazals?

3 A Obviously, the morning that my son's -- the father who
4 takes my son to school called me in a panic talking about
5 these people that were on the street holding signs of my
6 husband. I didn't know who they were. I didn't know what
7 their intentions were and that did make me afraid for my
8 safety in the United States, yes.

9 Q So just to be clear, was this a protest that occurred
10 near your home on October 26th, 2016?

11 A That's correct.

12 Q And you saw this protest?

13 A I did.

14 Q And tell me about how many people did you see.

15 A The first day?

16 Q The first day.

17 A Approximately five -- approximately five people. I
18 mean, I was genuinely in a state of shock that morning so my
19 memory of exactly how many people is a little off, but I
20 would say around five people.

21 Q And what do you recall these people doing?

22 A They were holding -- putting up posters and holding
23 signs, big signs. When the father had called to say there
24 were men on the bottom of the street with posters, in my
25 mind I hadn't visualized 6-foot-long banners and giant

1 protest signs sort of thing. Yeah, it was -- I was totally
2 shocked.

3 Q And you mentioned at the bottom of the street.

4 How close to your home were the protestors?

5 A So we're in a cul-de-sac that is a bit of like a
6 U-shape, so you couldn't see where the protestors were from
7 our house because it's a bit of a blind curve, but you go
8 around the blind curve and continue on the U, and that's our
9 children's school.

10 So I would say, maybe 250 meters around the curb
11 to where the protestors were, another 250 meters
12 approximately to my kids' school. So it was equal distance
13 from where we live to where the kids went to school.

14 Q Did you do anything in response to these protestors
15 being between your home and the children's school?

16 A The first day, yes. My -- so the father had picked up
17 my son. My son immediately he's in the car calling me,
18 "Mom, Mom, Mom, what are these people doing on the street?
19 Who are they? Who are they? What are they doing?"

20 So my daughter -- her school started later. She
21 was still in bed. And my husband had been at the gym when
22 this started. I drove my car down, left my daughter at the
23 house. I saw the protestors and was really just, in a momma
24 bear way, trying to think, what can I do to stop this before
25 I have to take my daughter to school. I mean, typically I

1 would walk her to school. It's less than a five-minute
2 walk. How am I going to take her to school with these
3 people standing here with signs that say terrible things
4 about her father.

5 So I called the police. I didn't know what else
6 to do. I didn't know who these men were, I didn't know what
7 their intentions were. I knew they were directed by the
8 Kazals, but I called the police because I was fearful of
9 what they were there for.

10 Q How did you know they were directed by the Kazals?

11 A On the bottom of all the posters, it said "Care of
12 Adam Kazal." They wanted it known that they were the ones
13 behind it.

14 Q Did the LAPD come out and respond to your call?

15 A They did.

16 Q And what, if anything, do you recall the LAPD having
17 done?

18 A Not a lot. They came out, they explained that people
19 have a right of protest and a right of free speech. They
20 said that they couldn't -- they were trying to hang the
21 posters on, you know, public property, sign posts and
22 people's private trees on their yards. So the LAPD officer
23 told them to take it down, that they couldn't do that, they
24 couldn't hang the signs on public or private property.

25 Then I had to go back because I had left my

1 daughter at the house, and I didn't -- Rodric had come by
2 that stage back from the gym, so he was talking to the
3 officer. And I just went back to the house to try and
4 figure out how to get my daughter to school and not have her
5 completely panic because these people were at the end of the
6 street. It didn't seem to me like the LAPD were going to do
7 anything to disperse them.

8 Q Were you afraid for your safety?

9 A I think the first morning I was more, again, in shock.
10 In protection mode for my kids. You know, my kids were
11 wrecked by it and afraid. And I think the fear came
12 probably a couple of days later.

13 There were some e-mails that went back and forth,
14 and they had also been doing something similar in Australia.
15 I think when the full weight of what they were doing dawned
16 on me, how much time and effort and money they were spending
17 to escalate things to this point, then I -- it -- I was
18 absolutely afraid that things were spiraling out of control.

19 This was a business relationship that had been
20 finished for five years almost, and they were there
21 protesting in front of my kids' schools over a commercial
22 dispute. It was -- it was terrifying --

23 THE COURT: Ask your next question, please.

24 BY MR. GEBELIN:

25 Q If I can just unpack that a little bit.

1 So you mentioned you were aware of a protest
2 occurring in Australia?

3 A Yes.

4 Q And how did you know about that?

5 A Well, friends and family and our attorney. I mean, it
6 was very obvious they were putting flyers places and driving
7 vans around. It was -- we had enough people and loved ones
8 in Australia that we knew the next day.

9 Q And you heard from those loved ones?

10 A Yes.

11 Q And they reported to you that they had seen these
12 protests and actions directly?

13 A Yes.

14 Q Were you aware that there was also a protest occurring
15 outside of Mr. David's business?

16 A I -- yes. Later that day, I knew that they had moved
17 from our neighborhood to the business. I wasn't there
18 personally to witness it, but I knew of it. I had seen some
19 cell phone footage of it.

20 Q If I can, there's a binder in front of you with tabbed
21 exhibits.

22 If I can have you turn to Exhibit Number 9, so tab
23 number 9.

24 Do you recognize the document that's at Exhibit
25 Number 9?

1 A Yes, it's an e-mail that Adam Kazal sent to my husband.

2 Q And this was sent on October 27th, 2016, so the day
3 after that protest in front of your home?

4 A Correct. Yes.

5 MR. TAYLOR: Lacks foundation, Your Honor.

6 THE COURT: The document's already into evidence.
7 I'm not sure why we're talking about a document that's
8 already been admitted and testified to through another
9 witness.

10 So the objection's overruled, but it's your time,
11 Counsel.

12 MR. GEBELIN: Thank you.

13 BY MR. GEBELIN:

14 Q Do you recall seeing this e-mail about the same time
15 that it was sent to your husband?

16 A Yes. The same day.

17 Q In viewing this e-mail, did you take it to mean -- to
18 have any sort of meaning towards you or your husband?

19 A Meaning, in what regard?

20 Q Did you take it as a threat or anything else of that
21 nature?

22 A Oh, definitely. The last two sentences of that e-mail
23 were very alarming to me. The idea that I'll show you how
24 Adam Kazal is different to the rest of my family resonated
25 because I know that Mr. Kazal in the past had threatened a

1 journalist for the *Sydney Morning Herald* by saying, you
2 know, if you keep writing about my family, I'm going to make
3 sure that you and I are on the front page of the newspaper,
4 which seemed to me very much a threat of violence against
5 this journalist. So this seemed to follow the pattern of
6 sort of irrational, outside-the-bounds-of-the-law behavior.

7 If you have a problem with a journalist, sue them
8 for defamation. Don't threaten violence on them. Don't go
9 to their wife and child and bang on the door when you know
10 that the journalist isn't home. I mean, it's just, as I
11 said, it's such thuggish behavior.

12 THE COURT: Counsel, can you ask the next
13 question.

14 MR. GEBELIN: Yes, Your Honor.

15 BY MR. GEBELIN:

16 Q Did you see any other communications from Mr. Kazal
17 following this e-mail?

18 A I know there was an e-mail he sent to our attorney in
19 Sydney, when we had requested they cease and desist the
20 activities that I'm sure is probably somewhere in evidence
21 but --

22 Q Can you turn to Exhibit Number 12, please.

23 Is this the e-mail that you're referring to?

24 A Right, about the money transfer of \$666,666.66.

25 Q Does that number stick out to you for any reason?

1 A I mean, I think it's obviously meant as a threatening
2 number. Everyone knows that 666 is the sign of the devil,
3 so clearly it's intended to convey something evil.

4 It seemed like a clear, you know, if you fail to
5 meet my demands, I reserve the right to do whatever is
6 necessary.

7 The language of the e-mail to me said, yes, I'm
8 willing to go outside the bounds of the law.

9 Q If I can have you turn now just to another exhibit
10 we've seen before, Exhibit Number 11. That's a Tweet?

11 A Right, the Twitter account.

12 Q And you recognize -- did you see this Twitter message
13 about the time that it was made in October --

14 A Right. Again, late October. The idea of a team in
15 L.A., you know --

16 THE COURT: Counsel, can you ask the next
17 question, please.

18 BY MR. GEBELIN:

19 Q And what message towards your safety and your family's
20 safety did you take from this message?

21 A That there was a threat to our safety. That he had a
22 team in L.A. They were going to follow us wherever we go.
23 That was the message conveyed to me from the -- that Tweet.

24 THE COURT: Counsel, next question please.

25

1 BY MR. GEBELIN:

2 Q Do you remember any other actions in November 2016
3 relating to the Kazals?

4 A Yes, there was another round of protests that started
5 in early November, this time with many more people and the
6 people were much more aggressive. There was a van that I
7 believe you guys have seen pictures of that was parked where
8 the protestors were again between my home and my children's
9 school.

10 Q Was there anything that stood out to you about that van
11 in particular? The way it was decorated; the way people
12 were acting with it?

13 A Well, it was obviously intended to embarrass my
14 husband, cause distress to us, claim he had committed some
15 horrendous crime that, of course, never committed. You
16 know, it was to me like a giant conspiracy theory, and it's
17 really hard to prove a negative. How do you prove something
18 that didn't happen?

19 THE COURT: Counsel, next question, please.

20 BY MR. GEBELIN:

21 Q Were there any people there with the van?

22 A Yes. In November, there were, as I said, there were
23 more protestors, and they were more vocal and more
24 aggressive than the first time.

25 Q Do you remember anything that they said or any of the

1 aggressive actions they took?

2 A You know, after the -- after the first time I insured
3 that when I had to drive past them, especially with the kids
4 in the car, baseball hats, sunglasses, put the visor down.
5 I was afraid they might be filming my children. I never
6 stopped or went -- I went as quickly as I could past them
7 without engaging them. So I don't have a specific recall.
8 I just know they were saying things outside of my car, but I
9 don't know exactly what they were saying.

10 Q By this point, were you in fear for your safety or your
11 family's safety?

12 A Oh, by this point -- I mean, I had already -- I would
13 say within 48 hours of the first protest in October, I had a
14 security company come and change all the locks on all the
15 doors in our house to some special locks that you can't get
16 copied, that are hard to bump out.

17 I had CCTV cameras installed, I had motion sensor
18 lights installed, and I hired an armed security company to
19 come and monitor the street 24 hours a day. They had to
20 send me a report looking for suspicious activity and
21 suspicious vehicles on the street. So we were most
22 definitely concerned for our safety. Most definitely.

23 Q Other than the first day that the protestors came and
24 you called the police, were there any other times you called
25 the police in connection with either protests or being

1 surveilled?

2 A The first day of the protest that happened in November
3 with the vans, I called the police that day. The police
4 were at my house when the vans and several other cars chose
5 to slowly drive by my house, me, filming me, going up the
6 cul-de-sac, turning around, very slowly filming me the
7 entire time. It was like they were taunting me. Like the
8 fact that you have the police here doesn't scare us at all.
9 We're just going to drive by slowly and --

10 THE COURT: Next question, Counsel.

11 THE WITNESS: And there was another time after
12 that.

13 THE COURT: Ma'am, I'm sorry. He has a
14 responsibility -- not blaming you -- he has a responsibility
15 to ask you questions and then get answers from you, so I'm
16 going to keep interrupting until he does what I'm asking him
17 to do, which seems to be more and more difficult.

18 But go ahead, Counsel.

19 BY MR. GEBELIN:

20 Q What was the other time that you called the police?

21 A When I felt that I had been followed. There was a
22 white van that I had felt had been following me much of the
23 day, and it was parked on the end of my street. And I
24 called the police that day as well.

25 Q Was that also in 2016?

1 A Yes. That would have been sometime in November.

2 Q Following that time calling the police, have there been
3 any other times where you felt like you were being followed?

4 A I think I probably had a sense of being followed
5 multiple times. Even to this point, I take photographs of
6 unusual cars, unfamiliar cars. Two days ago, I was taking
7 photographs of license plates of unfamiliar cars on my
8 street. I always feel like I am looking over my shoulder.
9 I always feel like the hair on the back of your neck is sort
10 of on high alert for people who look at you the wrong way,
11 cars that seem out of place, that sort of thing.

12 Q If I can, can you take a -- flip now to Exhibit
13 Number -- marked Number 28 in the book.

14 On this exhibit, there are a few photographs on
15 the first and second page.

16 Do you recognize the person in the photographs?

17 A It's me.

18 Q Do you recognize about where those photographs were
19 taken?

20 A I couldn't say for sure. I have not seen these
21 photographs before you showed them to me about an hour ago.
22 I didn't know they existed.

23 Q Based on anything in the photographs or the document,
24 can you tell about when the photographs were taken?

25 A Well, the document is dated Wednesday, December 28,

1 2016, and the text says: "I've also attached the latest
2 pics of his wife." So that suggests to me that they were
3 taking photographs of me some time in December of 2016.

4 MR. GEBELIN: Your Honor, I'd like to move
5 Exhibit 28 into evidence.

6 THE COURT: Any objection?

7 MR. TAYLOR: No objection, Your Honor.

8 THE COURT: All right. Twenty-eight will be
9 admitted.

10 (Exhibit 28 received in evidence.)

11 BY MR. GEBELIN:

12 Q Earlier we talked about an incident in Australia where
13 you had been followed by an investigator.

14 Do you remember talking about that?

15 A Yes.

16 Q Were there any -- other than that, other than the
17 protestors that we've talked about, other than the e-mail
18 messages or the tweets that we talked about, do you have any
19 other reason to believe that the actions that we just talked
20 about were threats against you and your family?

21 A Yes. Rodric was followed with a business associate in
22 the central business district of Australia by two of the
23 Kazal brothers who were making threatening -- swinging
24 something in a threatening manner. There was a police
25 report in Australia that was filed about that.

1 There was an incident where my father-in-law
2 actually issued an apprehended violence order by the New
3 South Wales Police because of an assault in Sydney by one of
4 the Kazal brothers.

5 Q Did you ever talk with members of Mr. David's family
6 about intimidation by the Kazals?

7 A Oh, yes. Nobody could understand how this could be
8 happening where people were being accosted in the middle of
9 the central business district by various Kazal family
10 members. We talked about it frequently.

11 I took my children back to Australia and spoke to
12 my in-laws about it in 2013 and were shown some very
13 disturbing text messages and told of some very disturbing
14 voice messages.

15 Q Just to be very clear about this, in 2016, after the
16 protests started, were you afraid for the safety of yourself
17 or your family?

18 A Absolutely. I had always been a little bit afraid for
19 our safety -- I mean, from the moment we left Australia, I
20 was in fear for our safety. The 2016 protest just seemed
21 like another escalation of what seemed to be incredibly
22 irrational, thuggish behavior.

23 THE COURT: Next question, Counsel.

24 BY MR. GEBELIN:

25 Q Based on your interactions with your husband, was he

1 afraid for the family himself --

2 A Absolutely.

3 Q -- you and your family?

4 A He had been afraid for his immediate family and his
5 father from the time of 2013 when he was assaulted by
6 Adam Kazal in The Rocks. He's been afraid for us since
7 basically we moved to the United States. He tries to put on
8 a brave face for everyone, but --

9 Q Despite this brave face, did you notice Mr. David being
10 in emotional distress?

11 A Absolutely. I mean --

12 Q How so? What did you see?

13 A He basically stopped sleeping. He would be up at
14 midnight and 4:00 in the morning driving the streets to see
15 if there were people there. Yeah, he really basically
16 stopped sleeping. I could tell that was taking a terrible
17 toll on his emotional state, but again he was trying to keep
18 me sane to a degree and keep the children from being more
19 afraid than they already were. The children had no idea
20 what was going on.

21 MR. GEBELIN: Thank you, Ms. David.

22 No more further questions at this time,
23 Your Honor.

24 THE COURT: All right. Cross-examination.

25 ///

CROSS-EXAMINATION

1
2 BY MR. TAYLOR:

3 Q Good afternoon, Mrs. David. I thank you for being
4 here.

5 My name is Mr. Benjamin Taylor, and I'm an
6 attorney for the defendants in this case, and I have a few
7 questions for you.

8 You testified a few moments ago about your
9 husband's business dealings with the Kazals starting around,
10 I think, 2008, 2009.

11 Do you recall that testimony?

12 A Yes.

13 Q And just to be clear, your husband was the one in your
14 family who was dealing with the Kazals on the business side;
15 right?

16 A Yes.

17 Q You weren't personally involved in the business
18 venture; right?

19 A No.

20 Q Now, in regard to the protestors who appeared in your
21 neighborhood on the morning of October 26, 2016, those
22 protestors who you saw on the first day, they didn't make
23 any threats of physical harm to you or your children, did
24 they?

25 A No. I don't believe I -- I don't believe the

1 protestors on the 26th, I don't believe they said anything.

2 Q And they didn't attempt to strike you or lay hands on
3 you in any way, did they?

4 A No.

5 Q And none of those people ever tried to come onto your
6 property; right?

7 A Not the first day. I believe on the second round of
8 protestors, they were coming very close to being on my
9 property.

10 Q When you say "they," you mean the person driving the
11 van?

12 A There were also other people up and down the street a
13 lot. It was a very unpleasant time because I didn't ever
14 know who was -- who these people were. Were they people
15 that the Kazals had flown out from Australia that had some
16 personal vendetta or interest in the case. At the time I
17 had no idea that they were people they had hired. I just
18 knew that there were a lot of strange adult men around my
19 house and my children's school and our property, and it was
20 incredibly unnerving.

21 I still feel like I have to close my garage door
22 before I unlock my car doors. I still have to get in my car
23 and lock my car doors before I open my garage door because
24 I'm always certain there's going to be somebody around the
25 side who's going to come in and attack me. And that all

1 stems from having all those people on the street that I
2 didn't know what their intentions were and combined --

3 THE COURT: Next question, Counsel.

4 BY MR. TAYLOR:

5 Q But, again, none of the people who were actually there
6 tried to come in and attack you; right?

7 A No.

8 Q None of them tried to break into your house, did they?

9 A Not as far as I know.

10 Q Now, you -- I think, you said you called the police
11 because you weren't sure what else to do; right?

12 A On the first day.

13 Q Right. And what did you tell the police when you
14 called -- I guess you called 9-1-1; right?

15 A Yes.

16 Q Do you recall what you told the operator?

17 A As I said, I was sort of in shock that morning. It was
18 early -- the father had called, mentioned the posters. I
19 went down -- my daughter was young and still at the house,
20 and I was -- I don't have a good recollection of what I said
21 to the 9-1-1 officer, but I was pretty panicked at that
22 stage.

23 Q Did you tell the 9-1-1 dispatcher, if you recall, that
24 there were some protestors outside in connection with a
25 business dispute involving your husband?

1 A That makes sense because that was what I perceived it
2 to be.

3 Q Do you recall telling the 9-1-1 dispatcher that your
4 husband was in a dispute with a Lebanese man?

5 A I may have.

6 Q Is there some reason you would have done that,
7 referring to the Kazals as Lebanese?

8 A Probably to illustrate that it wasn't an American who
9 was the person who was involved in the dispute, to alert the
10 authorities to the fact that we had been followed across the
11 ocean by people and they were now on U.S. soil, harassing us
12 on U.S. soil, and that the other individual was not a U.S.
13 person. That would have been why I would have mentioned
14 that he was Lebanese.

15 Q But you had met Charif Kazal many years earlier; right?

16 A Yes.

17 Q And you met him in Australia; right?

18 A I'm not -- yeah, probably.

19 Q But you knew he was Australian?

20 A I'm not sure I know that he's Australian.

21 Q You've heard him speak before; right?

22 A Uh-huh.

23 Q He speaks with an Australian accent, doesn't he?

24 A I don't believe he does, no.

25 Q But you knew that the Kazal family lived in Australia

1 at the time, not in Lebanon; right?

2 A Okay.

3 Q I'm asking you. You knew that; right?

4 A I'm not sure I knew where the Kazals lived in 2016.

5 Q I see. So you thought maybe they lived in Lebanon?

6 A As I said, I believe they live a lot of different
7 places, including Dubai and the Middle East, so I couldn't
8 begin to tell you where I thought they lived in 2016 because
9 I had no idea where they lived in 2016.

10 Q Did you think that the police would take your call more
11 seriously if you told them that someone from an Arab country
12 was involved, rather than someone from Australia?

13 A Absolutely not.

14 Q Now, when you found out that there were protestors
15 outside on the morning of the 26th of October, did you go
16 outside and take a look at the protestors yourself?

17 A I did.

18 Q Did you speak to them?

19 A I don't recall. As I said, I had left my daughter. My
20 husband was not home yet, I left my daughter at home. I
21 actually drove my car down the street and got out of my car.
22 And, as I said, I believe I was in a state of shock. I know
23 there's some correspondence where Tony -- one of the Kazals
24 calls me a screaming hyena. The fact is I was a sort bear.
25 I was out there in shock trying to do what I could do to

1 protect my children from having to see this.

2 THE COURT: Ms. David, just so I'm clear, you
3 don't recall what, if anything, you said to them?

4 THE WITNESS: To the protestors, no, I don't
5 recall what I said to the protestors.

6 THE COURT: Question, please.

7 MR. TAYLOR: I would move to strike that last
8 response.

9 If you can please answer my question directly.
10 Listen very closely so we can get a clear record.

11 BY MR. TAYLOR:

12 Q You don't recall going outside to speak with the
13 protestors, is that what you just said?

14 A I recall driving down. I recall calling the police. I
15 recall the police coming. My -- I don't recall talking to
16 the protestors.

17 Q Thank you.

18 Now, you did go outside and take photos and film
19 the protestors with your phone; right?

20 A I did.

21 Q And that was on the first day; right?

22 A That was -- yes.

23 Q And on the later days in November, you also went
24 outside and took --

25 A I don't believe so. I believe I avoided the November

1 protest as much as possible. But it seems to me like you're
2 going to suggest they've been filming me the whole time and
3 you'll be able to let us know if I spoke to them or not.

4 Q I'm just asking you for your recollection right now.

5 A My recollection is taking photographs only on the first
6 day, and on the subsequent days -- I avoided the van and the
7 protestors that were there on the subsequent days.

8 Q The first day you went outside, you said you took some
9 video and photos with your phone. From what distance did
10 you do so, meaning relative to the protestors?

11 A A couple of feet. It's not a very wide street, so -- I
12 mean, if I was standing in the middle of the street, I would
13 be maybe 3 feet from a protestor on this side and 3 feet
14 from a protestor on that side. I mean, there's not a lot of
15 distance where you could stand to take video or photographs.

16 Q You testified a few minutes ago that there was some
17 kind of violent incident involving a car and being followed
18 and a cell phone. That was in 2011, you said?

19 A I believe it was early 2011.

20 Q And to be clear, it wasn't actually any one of the
21 Kazal brothers who actually did what you were describing;
22 right?

23 A I believe Tony Kazal was the one who hired the man who
24 followed me.

25 Q But it wasn't Mr. Kazal himself who you think was the

1 one following you?

2 A I didn't say it was Mr. Kazal himself. Mr. Kazal hired
3 the man who was following me.

4 Q But you don't know that for sure, you're just
5 assuming --

6 A I believe it's in evidence. I believe we have evidence
7 that Tony Kazal hired the investigator who followed me that
8 day. Who also happens to be the man who came to Los Angeles
9 to organize the protest on behalf of the Kazals as well.

10 Q So was it your understanding that the Kazals were
11 willing to do things like the incident you just described as
12 early as 2011?

13 A Well, before -- even before that, I would say.

14 Q I think you described it as irrational or violent
15 behavior?

16 A I think it was out of the bounds of how people behave
17 normally in a commercial dispute. It raised alarm bells for
18 me that people who are in a commercial dispute would do some
19 of the things that they were doing.

20 Q And I believe you testified a few moments ago that you
21 considered the appearance of the protestors in 2016 to be an
22 escalation, I think was your term; right?

23 A Yes.

24 Q So is it your testimony that even though you believe
25 the Kazals had been willing to engage in violent activity as

1 early as 2011, that the appearance of some protestors in the
2 street was an escalation?

3 A I think when you look at what was combined happening
4 here and in Australia and the level of time and effort that
5 one would have to put into this sort of vengeance campaign,
6 it definitely was an escalation to sending text messages.

7 Q Are you familiar with an individual named
8 Matthew Price?

9 A Yes.

10 Q How do you know him?

11 A He's -- he and his wife are friends of mine.

12 Q And how long have you known them?

13 A Probably since 2012.

14 Q Were you aware at the time the protestors appeared in
15 your neighborhood for the first time in October of 2016 that
16 Mr. Price had been working as the chief technology officer
17 at Thunder Studios?

18 A I believe so.

19 Q And were you also aware at that time that Mr. Price had
20 created and registered domains for five websites in the name
21 of the Kazal family?

22 MR. GEBELIN: Objection, Your Honor. Lacks
23 foundation.

24 THE COURT: If she knows, she may answer.

25 THE WITNESS: I did not know that.

1 BY MR. TAYLOR:

2 Q So you did not know that Mr. Price had created a
3 website called Adamkazal.com?

4 MR. GEBELIN: Objection. Lacks foundation for the
5 presupposed conclusion that Mr. Price created that.

6 THE COURT: Objection is noted but overruled. She
7 can answer if she knows.

8 THE WITNESS: I did not.

9 BY MR. TAYLOR:

10 Q Now, we looked at Exhibit 11 a few moments ago when
11 Mr. Gebelin was questioning you. If you can turn back to it
12 for a moment, I'd appreciate it.

13 There it is. Do you have the document in front of
14 you?

15 A I do.

16 Q You said you saw this tweet around the time that it was
17 posted, in 2016?

18 A I believe so, yes.

19 Q And you said you understood it to mean that Adam Kazal
20 was willing to have your family followed?

21 A Well, I think the language in terms of suggesting that
22 he has a team in L.A. and the "expose you wherever you go"
23 to me, and a team, feels like a physical sense. I have a
24 team. We're going to follow you wherever you go. That was
25 what I took from reading it.

1 Q This tweet was directed to Rodric David; right?

2 A Correct.

3 Q And it said "expose you," not "follow you"; right?

4 A It does say "expose you," but the meaning that I took
5 from it was alarmed that he had a team in Los Angeles and
6 that "wherever you go" suggests: We know where you are.

7 They clearly knew where we were. They were at my
8 house. They were near my kids' schools. They were at my
9 husband's business. It's not a big leap to think that it's
10 a frightening thing to have a team of people from somebody
11 who considers you a bitter enemy, threatening to follow you
12 wherever you go when they're already turning up to the
13 places that are most important to you.

14 Q The police came to the neighborhood in response to your
15 call on the first day and they came into your house
16 afterwards; right?

17 A That -- I think the timing on that might be incorrect.
18 The first call on October 26th, I don't believe they came
19 into the house that time. I think the discussion was had on
20 the street.

21 As I said, I eventually got my daughter to school
22 that morning. So the police did not come into that house
23 that morning because I remember putting her in the car,
24 telling her to keep her head down, putting the visor down,
25 turning the other way to go to the school the back way.

1 So I know -- I am 99 percent sure the police
2 didn't come into the house that day. I know the second time
3 I called they did, in fact, come to the house and come into
4 the house. That would have been the first day of the
5 protest with the van.

6 Q It's correct, isn't it, that on the first day the
7 police told you and your husband that there was a right to
8 peaceful protest; correct?

9 A Something to that effect, yes.

10 Q And that's true; right? You're aware there's a
11 constitutional right to protest?

12 A Yes, I'm aware of that.

13 Q And there's a constitutional right to free speech in
14 this country; right?

15 MR. WIENER: Your Honor, I'm going to object.

16 THE COURT: I'm sorry, Counsel. Who's doing the
17 objection for the plaintiffs' side for this witness? Is it
18 a tag team effort, or is it one lawyer?

19 MR. WIENER: I'll defer to Mr. Gebelin.

20 THE COURT: Why don't you please sit down, then.
21 Thank you.

22 Go ahead.

23 BY MR. TAYLOR:

24 Q Thank you, Your Honor.

25 I'm not sure if you answered my question. I said

1 you're aware there's a constitutional right to free speech
2 in this country; right?

3 A Yes, of course.

4 MR. TAYLOR: Okay. Nothing further, Your Honor.
5 Thank you.

6 THE COURT: All right. Mr. Gebelin.

7

8 REDIRECT EXAMINATION

9 BY MR. GEBELIN:

10 Q Just very briefly.

11 Ms. David, do you know if any of the defendants
12 are American citizens?

13 A I don't know for sure.

14 Q Do you --

15 A I don't believe they are.

16 Q So you don't believe that Charif Kazal is an American
17 citizen?

18 A I do not believe he is.

19 Q Do you have any understanding as to whether or not
20 Adam Kazal is an American citizen?

21 A I do not believe he is.

22 Q Do you have any understanding as to whether Tony Kazal
23 is an American citizen?

24 A I do not believe he is.

25 Q Do you have any understanding as to whether or not

1 non-American citizens have First Amendment rights?

2 A I do not know one way or the other, but I --

3 THE COURT: Next question, Counsel.

4 MR. GEBELIN: Thank you.

5 BY MR. GEBELIN:

6 Q Do you have any understanding whether or not -- based
7 on your experience with the Kazals, do you have any
8 understanding of whether or not any of them have -- strike
9 that.

10 No further questions, Your Honor.

11 THE COURT: All right. Mr. Taylor.

12 MR. TAYLOR: Nothing further, Your Honor.

13 THE COURT: May this witness be excused?

14 MR. GEBELIN: Yes, Your Honor.

15 THE COURT: All right. Thank you, ma'am. You may
16 step down. Have a good afternoon.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: Counsel, you may call your next
19 witness.

20 MR. WIENER: Sure. Your Honor, the witness should
21 be in the hallway. Is it okay if I exit?

22 THE COURT: Please do.

23 Ladies and gentlemen, I read an article recently
24 that said sitting down is like smoking, so feel free to
25 stretch if you'd like while we're waiting for the witness.

1 We can't do it while the witness is testifying, but while
2 we're waiting, feel free to stretch. That didn't apply to
3 the parties. I'm just kidding.

4 THE CLERK: Please raise your right hand.

5 PAUL KOLESA, PLAINTIFFS' WITNESS, SWORN

6 THE CLERK: Thank you. Please be seated.

7 Please state and spell your name for the record.

8 THE WITNESS: Paul, P-a-u-l, K-o-l-e-s-a.

9 THE COURT: You may proceed, Mr. Wiener.

10

11 DIRECT EXAMINATION

12 BY MR. WIENER:

13 Q Mr. Kolesa, can you tell me, are you employed at
14 Thunder Studios?

15 A Yes.

16 Q What is your job description at Thunder Studios?

17 A Chief risk officer. I cover I.T., information
18 security, digital assets, intellectual property.

19 Q How long have you worked at Thunder Studios?

20 A Since November 2016.

21 Q Were you the person responsible for monitoring
22 Thunder Studios' photographs?

23 A Yes.

24 Q When did you become aware that Thunder Studios'
25 photographs were being used on the website

1 www.kazalfamilystory.com?

2 A The later part of 2016, possibly around September.

3 Q Did you discuss that issue with Mr. David?

4 A I -- at that time, I was a contractor at
5 Thunder Studios working for UTG I would have discussed it
6 with my direct boss, Matt Price.

7 Q When did you begin as a contractor at Thunder Studios?

8 A June 2016.

9 Q All right. Do you know if Mr. David made a request to
10 have photographs copyrighted?

11 A Yes.

12 Q Did you file a Digital Millennium Copyright Complaint
13 with GoDaddy in October of 2016?

14 A Yes, I did.

15 Q I'd like you to turn to Exhibit 4 in the binder.

16 Is this a true and correct copy of the complaint
17 that you filed?

18 A Yes.

19 Q All right. And you filed this complaint on or about
20 October 13th, 2016?

21 A Yes, that's correct.

22 MR. WIENER: Your Honor, I'd like to move
23 Exhibit 4 into evidence.

24 THE COURT: I think Exhibit 4 is already in
25 evidence.

1 MR. WIENER: I believe Your Honor is correct. I
2 wasn't positive. Thank you.

3 BY MR. WIENER:

4 Q What was the complaint made in reference to,
5 specifically?

6 A We noticed that pictures were taken from our website,
7 defaced and used on their website. If -- if I think back
8 specifically, I remember one with Rodric David and the
9 recording artist Tyga. One that might of had Whoopi
10 Goldberg in it that was taken on a movie set. A few that
11 were taken from automotive shoots.

12 Q Was there a response made to the complaint?

13 A They didn't respond to the DMCA request.

14 Q This reflects that there was correspondence from an
15 individual named Ronald Richards to GoDaddy?

16 A That's correct.

17 Q Who do you understand Ronald Richards to be?

18 A I believe he was an attorney.

19 Q And in response, did he state that his office had been
20 retained by the site?

21 A Yes, yes, he did.

22 Q Did he identify specifically the name of the
23 individuals or individual who had retained him?

24 A I don't believe he named them specifically.

25 Q All right. In the response, it references that: "We

1 spoke with the complainant, Paul Kolesa, this morning."

2 Did you speak with Mr. Richards?

3 A Yeah. He called me one morning and kind of tried to
4 give me some, I guess, for lack of a better term, a legal
5 threat.

6 Q And is that reflected here where it says that -- in
7 Mr. Richards' response, he claims that the DMCA complaint,
8 quote, "has no merit and exposes him to damages," end quote?

9 A Yes, that's correct.

10 Q Do you believe the DMCA complaint exposed you to
11 damages?

12 A No, I do not.

13 Q Do you believe that Mr. Richards was attempting to
14 threaten you?

15 A I got that impression, yes.

16 Q Do you know if the photographs were removed from
17 Kazalfamilystory.com in response to this complaint?

18 A No.

19 Q What happened instead?

20 A When they failed to respond to the DMCA request,
21 GoDaddy suspended their hosting.

22 After they were suspended on GoDaddy, they
23 temporarily tried to move to another U.S.-based hosting
24 company that was a subsidiary of ipage, Inc. Once the site
25 went up on ipage, I called and spoke to them that day,

1 explained that they failed to respond to a DMCA request,
2 they immediately suspended their hosting there. Then the
3 site was down for a short period of time.

4 Q Did the website eventually come to be transferred to
5 Orange Website?

6 A Yes. Yeah, after about two, three weeks' time.

7 Q I'd like you to turn to Exhibit 3 in the binder.

8 A Yeah.

9 Q Do you understand this to be a GoDaddy record regarding
10 Kazalfamilystory.com?

11 A Yes.

12 Q And if you look about approximately ten lines down, it
13 states transferred away date, October 25th, 2016.

14 What do you understand that date to mean?

15 A That would probably be the date that the domain name
16 was transferred away from GoDaddy.

17 Q And can you tell from this document where the domain
18 name was transferred to?

19 A Yeah. I can see under the name service listing where
20 it says NF7.orangewebsite.com, that's an Orange Website DNS
21 server.

22 Q Can you also tell from this document who the registrant
23 of the website Kazalfamilystory.com is?

24 A The name's listed as Jean Ghalo.

25 Q Do you see the name Joe Dabab anywhere on this

1 document?

2 A No, I do not.

3 Q Do you understand this document to mean that the
4 registrant of the website was Jean Ghalo?

5 A That's how it appears.

6 Q And can you tell from this document where Jean Ghalo is
7 located?

8 A Beirut.

9 Q Is that --

10 A In Lebanon. Beirut, Lebanon.

11 Q Do you have any understanding of what Orange Website
12 is?

13 A I do. It's an Icelandic-based hosting company. Being
14 based in Iceland, it's not covered by U.S. or EU copyright
15 law, so I believe the move there was most likely to avoid
16 DMCA further action.

17 Q In December 2016, did Thunder Studios file copyright
18 registrations for certain of the Thunder Studios'
19 photographs?

20 A Yes.

21 Q Can you verify that the copyright registrations are
22 attached -- are Exhibits 23 and 24 in your binder?

23 A Yes.

24 Q And were you the person responsible for registering
25 these photographs?

1 A Yes, I was.

2 Q How did you verify the dates of publication of the
3 photographs?

4 A These were when they were posted on our website.

5 Q And you verified the dates they were first posted on
6 the website?

7 A Yes.

8 Q Were there any technology measures on Thunder Studios'
9 website to prevent the photographs from being copied?

10 A No, it's not common.

11 Q So would it be possible for the photographs during this
12 time period, after having being registered, would it be
13 possible for somebody to copy the photograph?

14 A Yes.

15 Q Did the terms of use of Thunder Studios' website
16 prohibit copying of its photographs?

17 A Yes.

18 Q And their terms of use were visible on the website in
19 December 2016?

20 A Yes, they were.

21 Q And I'd like you to briefly turn to Exhibit 25.

22 Are you familiar with these terms of use?

23 A Yes.

24 Q And there's a correct copy of the terms of use as they
25 appeared on Thunder Studios' website in December 2016?

1 A Yes.

2 Q Do you know if the Kazals copied photographs on the --
3 strike that.

4 Do you know if the copyrighted photographs were
5 copied on Kazalfamilystory.com in 2017?

6 A Yes, they were.

7 Q Did you contact Orange Website to request that they
8 take down the photographs?

9 A I tried to contact Orange Website multiple times. I
10 never received a response back.

11 Q How did you try contacting Orange Website?

12 A Through all the contact forms on their website. I
13 tried using the abuse report contact. From my
14 understanding, they won't respond to anybody but an
15 Icelandic court.

16 Q I would like you to turn to Exhibit 31.

17 Do you recognize this Web page?

18 A Yes.

19 Q Can you explain to the jury what it is, the first page.
20 It's Bates-stamped in the lower right-hand corner
21 Plaintiffs' 1870.

22 A This is the main Rodric David landing page from
23 Kazalfamilystory.com.

24 Q Do you recognize the photograph on this page?

25 A I do.

1 Q Is it one of the copyrighted photographs?

2 A It is, yes.

3 Q And it's correct, the original photographs didn't
4 include the label that you see here?

5 A No, they didn't.

6 Q Did any of the photographs on Thunder Studios' website
7 contain derogatory statements about Mr. David?

8 A No, they did a little photoshopping.

9 Q Did anyone ever seek authorization or consent to use
10 the photographs?

11 A No.

12 Q Do you recognize this as one of the copyrighted
13 photographs in Exhibits 23 and 24?

14 A I do, yes.

15 Q Can you identify for the jury what is the name of this
16 photograph?

17 A Off the top of my head, it's "Rodric David Meeting
18 Distribution 101." I can verify that.

19 Q If it makes it easier, Mr. Kolesa, if you want to
20 remove Exhibits 23 and 24 so you don't have to flip back and
21 forth as much.

22 A Okay.

23 "Rodric David Meeting Distribution 101 RD Featured
24 Image."

25 Q I'd like you to turn to the document Bates-stamped

1 Plaintiffs' 1875.

2 Do you recognize this as one of the copyrighted
3 photographs?

4 A Yes.

5 Q What is the name of this photograph as it appears in
6 the copyright registration?

7 A I believe it's "Rodric David Orange McLaren."

8 Q I'd like you to turn next to page Plaintiffs' 1880.

9 Is this one of the copyrighted photographs?

10 A Yes.

11 Q Can you identify for the jury what the name of this
12 photograph is?

13 A "Rodric David with Channel West Coast."

14 Q I'd like you to turn to the document Bates-stamped
15 Plaintiffs' 1885.

16 Do you recognize this as one of the copyrighted
17 photographs?

18 A Yes.

19 Q Can you identify for the jury the name of this
20 photograph as it appears in the copyright registration?

21 A "Rodric David Tesla P90D."

22 Q I'd like you to turn next to the document Bates-stamped
23 Plaintiffs' 1983.

24 Is this one of Thunder Studios' copyrighted
25 photographs?

1 A Yes.

2 Q Can you identify for the jury what its name is as it
3 appears in the copyright registration?

4 A I believe it's "Rodric David Blue R8," but let me just
5 verify that. It's just called "Audi R8 Dec 13."

6 Q I'd like you to turn to the document Bates-stamped
7 Plaintiffs' 1897.

8 Do you recognize this photograph as one of Thunder
9 Studios' copyrighted photographs?

10 A Yes.

11 Q And can you identify for the jury what the name of the
12 photograph is as it appears on the copyright registration?

13 A Let me just check the exact name. "Rodric David
14 Interview Launch Party."

15 Q Thank you.

16 By the way, the headline of this Web page is that:
17 Rodric David used his L.A.-based Thunder Studios' employees
18 to commit crimes on his behalf.

19 Did you commit any crimes on behalf of Mr. David?

20 A No.

21 Q Did he ever ask you to engage in any criminal activity?

22 A Never.

23 Q Do you know what this is made in reference to?

24 A This is typical with what we would see when they would
25 send e-mails through to Thunder Studios. They would address

1 them to Rodric, any Thunder Studios staff member they could
2 find an e-mail address for. It would -- they would direct
3 insults at Rodric, make accusations at him, make accusations
4 at staff members, threaten legal action, make wild claims
5 about news organizations. This is common.

6 Q Were you a recipient of any of these e-mails?

7 A We had e-mail filter rules in place to prevent them
8 from reaching general staff. I'd seen them before because I
9 monitored the in-box that they were directed to. We tried
10 to prevent them from reaching staff members.

11 Q I'd like you next to turn to Plaintiffs' -- the
12 document Bates-stamped Plaintiffs' 1902.

13 Do you recognize this photograph as being one of
14 Thunder Studios' copyrighted photographs?

15 A Yes.

16 Q And are you able -- can you identify for the jury what
17 its named as it appears in the copyright registration?

18 A "Rodric David Thunder Studios Office."

19 Q I'd like you to turn to the next page, which is
20 Bates-stamped Plaintiffs' 1903.

21 And on the last full paragraph on this page, can
22 you read it to the jury. The one beginning, "That's why the
23 good guys."

24 A (Reading.) That's why the good guys always beat the
25 bad guys in the movies. Something you and your criminal

1 associates at Thunder Studios who stole the online
2 identities of four members of my family should keep in mind
3 as your court proceedings advance.

4 Q Do you know, are there any criminals at
5 Thunder Studios?

6 A No, not to my knowledge.

7 Q Did anyone steal the Kazals' identities?

8 A No.

9 Q I'd like you to turn to the document Bates-stamped
10 Plaintiffs' 1906.

11 Do you recognize this as one of Thunder Studios'
12 copyrighted photographs?

13 A Yes.

14 Q And can you identify the name of this photograph from
15 the copyright registration?

16 A "Headshot of Rodric David."

17 Q I'd like you to turn to the document Bates-stamped
18 Plaintiffs' 1910.

19 Do you recognize this as one of Thunder Studios'
20 copyrighted photographs?

21 A Yes.

22 Q And can you identify for the jury its name as it
23 appears on the copyright registration?

24 A "Rodric David Orange McLaren 570S."

25 Q I'd like you to turn to the document Bates-stamped

1 Plaintiffs' 1915.

2 Do you recognize this as one of Thunder Studios'
3 copyrighted photographs?

4 A Yes.

5 Q And can you identify for the jury the name of the
6 photograph as it appears in the copyright registration?

7 A "Rodric David Nine Elev Set."

8 Q And the final one if you can turn to Plaintiffs' 1919.

9 Do you recognize this as one of Thunder Studios'
10 copyrighted photographs?

11 A Yes.

12 Q And can you identify for the jury the name of the
13 photograph as it appears on the copyright registration?

14 A "Rodric David Lexus L.A. Clippers car."

15 Q One of the contentions being advanced by the defendants
16 in this case is that they didn't copy any photographs after
17 2015.

18 Were certain of these photographs only first
19 published by Thunder Studios in 2016 or later?

20 A To my knowledge, yes.

21 Q And the copyright registration accurately reflects the
22 dates they were first published on Thunderstudios.com?

23 A Yeah, I believe they got those dates directly after the
24 website.

25 Q Were the photographs published on any other medium

1 prior to the dates reflected on the copyright registration?

2 A No. The first release of those photos would have been
3 on our website.

4 Q Do you have knowledge if any of the photographs were
5 published on Kazalfamilystory.com prior to having being
6 registered by Thunder Studios?

7 MR. TAYLOR: Objection. Lacks foundation,
8 Your Honor.

9 THE COURT: If he knows, he can answer.

10 THE WITNESS: Prior to?

11 BY MR. WIENER:

12 Q Right. The photographs were copyrighted on
13 December 9th to December 12th, 2016, and my question was
14 whether the Web pages I've shown you dated from 2017, wanted
15 to know if any of them had actually been published -- to
16 your knowledge were they published on Kazalfamilystory.com
17 prior to being registered in December 2016?

18 A As far as I can tell, they started using our pictures
19 on the third iteration of the website, which came around
20 toward the end of 2016. So, yes, that's very possible.

21 Q It's very possible. When did the third iteration of
22 the website come out?

23 A I don't know the exact date. Later in 2016, I believe.
24 Maybe mid 2016.

25 Q All right. Do you know if any of the specific

1 photographs I've shown you had been published prior to
2 registration?

3 A Not off the top of my head, I'm not sure.

4 Q All right. Are you aware of whether the defendants
5 engaged in any search-engine optimization activities for
6 Kazalfamilystory.com?

7 MR. TAYLOR: Objection. Lacks foundation. Calls
8 for speculation, Your Honor.

9 THE COURT: Lay the foundation, Counsel.

10 BY MR. WIENER:

11 Q Sure. Can you explain what you mean "search
12 optimization" to be?

13 A SEO is a practice of techniques that allows you to
14 improve your rank in the Google search engine result page,
15 making your Web page more visible.

16 Q How did you acquire that?

17 A I'm an information security specialist.

18 Q How long have you been an information security
19 specialist?

20 A Professionally, about four years.

21 Q Have you done any training?

22 A Yes.

23 Q Can you briefly tell the jury what type of training
24 you've done.

25 A I'm proficient in Python programming. I've trained for

1 Metasploit framework. I've done Rapid7 classes. I'm
2 working on CEH certification, and I've done a number of
3 open-source courses around penetration testing methodology.

4 Q All right. Can you describe, based on your
5 understanding, what SEO activities were done for the
6 Kazalfamilystory.com website?

7 A I know early on they did a Google Ad Words campaign.
8 I've seen them post shortened bit links with misleading
9 descriptions before.

10 They've posted in the comment sections of articles
11 written about Thunder Studios.

12 I've found them posting in open message boards on
13 random sites.

14 I've seen them backlink themselves on link farms.

15 Q Can you explain what that means to backlink?

16 A Backlinking is a technique where you get a link to your
17 website on another reputable website. It allows you to
18 build out a link neighborhood. The higher the SEO score of
19 the website that's backlinking you, the better it looks in
20 the search engine for your own website.

21 Q I'd like you to turn to the last page of Exhibit 31.
22 It's Bates-stamped Plaintiffs' 1921, but it's overlapped in
23 black so -- actually, it's page 1922, but it's not legible.
24 So it's the last page of Exhibit 31.

25 A Yeah.

1 Q Do you see the black boxes in the top one-third of the
2 page? They read Adam Kazal, Charif Kazal, John David, Karl
3 Kazal, Kazal brothers, Kazal family, Rodric David,
4 Tony Kazal?

5 A Yes.

6 Q Can you explain to the jury what those boxes are?

7 A Those are meta tags. You embed them in a body of a Web
8 page. A Web browser could pick them up and it can infer a
9 relationship between the objects that you're tagging. So by
10 tagging their names with Rodric's name, their businesses,
11 they're trying to draw a relationship between these items in
12 search-engine results.

13 Q Who would be the person responsible for these
14 meta tags?

15 A The person that's writing the post.

16 Q And did you work at Thunder Studios facility in
17 Long Beach?

18 A Yes.

19 Q And you work there on a daily basis?

20 A Yes.

21 Q At any time, did you observe persons conducting a
22 campaign at this studio?

23 A Yes. I was -- I was there the first day that they
24 showed up.

25 Q Do you recall the approximate date? Was it

1 approximately October 26, 2016?

2 A I remember it was near -- the first time was toward the
3 end of October, so that's probably correct.

4 And the second time was early -- November to mid
5 November, I believe.

6 Q Did you see the protestors when you arrived at work?

7 A They were there already when I arrived. Yeah, I had to
8 drive past them to get into the lot.

9 Q What time did you arrive?

10 A Around 9:30.

11 Q Did they try and block you from entering?

12 A They were standing in the driveway. They moved, but
13 they were just yelling.

14 Q Does Thunder Studios have security guards?

15 A We do.

16 Q Do you know the names of those security guards?

17 A James and Donovan.

18 Q Did you discuss this situation with James or Donovan?

19 A I might of had a brief conversation with them.

20 Q Did they inform you if either of them had taken actions
21 to disperse the unwelcomed guests?

22 A I don't think we did anything to try to move them on.

23 Q And did the picketers yell at you?

24 A They were -- yeah, as I was pulling into a lot, they
25 were yelling.

1 Q Did anyone who was present express concern to you about
2 it?

3 A Yeah, actually, we had a client that canceled last
4 minute.

5 We missed a delivery because the driver couldn't
6 get onto the lot.

7 Some of the employees seemed a little up in arms.

8 The clients that were there were definitely a
9 little unsettled by it.

10 Q What was Mr. David's reaction to it?

11 A He was a little shaken up by the whole thing. He had
12 to call us all together in the morning to explain what was
13 going on and try to ease some of the tension with the staff.

14 Q Did the protestors make any chants or -- regarding
15 Mr. David?

16 A Yes.

17 Q Do you recall what the chants were?

18 A Rodric the robber.

19 Q Were any of the protestors carrying signs?

20 A They were, yes.

21 Q Do you recall what the signs said?

22 A Thief, stole 180 million, c/o Adam Kazal at the bottom.

23 Q About how many days did you see this activity occur at
24 Thunder Studios?

25 A Active protestors, I think on two separate days, but

1 they also had a van that was covered in signs that showed up
2 pretty frequently.

3 Q What effect did you observe that these activities had
4 on Mr. David?

5 A It seemed distressing. I mean, he certainly was made
6 uncomfortable by it. It just looked clear that they were
7 there to try to either damage his reputation, damage his
8 business, have some kind of negative impact on the staff.
9 It made everybody unsettled.

10 Q Did you view it as an escalation from the prior
11 e-mails?

12 A I certainly did, yeah. I saw it as a clear message of
13 for them just trying to say: We can do more than just
14 harass you by e-mail. We can show up at your doorstep.

15 Q Did you wonder what's going to happen next?

16 A Yeah. I thought it could have, you know, an impact on
17 our jobs. I didn't know what their next step was going to
18 be in their campaign. It was unsettling.

19 MR. WIENER: Nothing further subject to redirect.

20 THE COURT: Mr. Taylor.

21

22 CROSS-EXAMINATION

23 BY MR. TAYLOR:

24 Q Good afternoon, Mr. Kolesa.

25 My name is Benjamin Taylor, and I'm one of the

1 attorneys for the defendants in this case. Thank you for
2 being here.

3 I just have a few questions for you.

4 A Sure.

5 Q You may still have in front of you Exhibit 31, the last
6 page that counsel was asking you about a few minutes ago.
7 That's page 4 of 4 at the bottom right.

8 Are we looking at the same page?

9 A Yeah.

10 Q And the black boxes in the middle of the page, you
11 said, were meta tags?

12 A Yeah.

13 Q You said those would be put there by the person who
14 authored the post?

15 A Usually, yeah. In WordPress, you could add them when
16 you're generating a post.

17 Q Are you saying that the person who wrote whatever
18 content is on that page is necessarily also the person who
19 put in those meta tags?

20 A Most likely.

21 Q Isn't it possible, though, that one person could author
22 the content and then a second person who's actually putting
23 the content on the site could then embed those meta tags?

24 A I suppose that depends on how many people are
25 administrating your site. I mean, WordPress is fairly

1 straightforward. Normally, it's one person managing
2 installation.

3 Q You said several times during your testimony "they,"
4 used the word "they" plural with respect to the website, the
5 Kazalfamilystory website.

6 You don't actually know who was the one
7 maintaining or posting content to that website, do you?

8 A Well, I can't say with 100 percent certainty.

9 Q We looked at Exhibit 3 during your direct testimony as
10 well. If you can flip back to that exhibit for me.

11 A Sure.

12 Q You said that this exhibit reflects that the
13 Kazalfamilystory domain was transferred at some point in
14 2016?

15 A Yes.

16 Q Is it correct, sir, that you can't actually tell from
17 looking at this document who would have been the one to
18 transfer the domain to a different hosting company, can you?

19 A I would presume by looking at this that the only person
20 with the authority to do that would be the technical contact
21 or the administrative contact that's listed as Jean Ghalo.

22 Q You said that you tried to contact this Orange Website
23 company.

24 A Yes.

25 Q You went to the website for that company and tried to

1 fill out a "Contact Us" form?

2 A Yeah. I tried a "Contact Us" form, and I tried an
3 abuse support link that came up on the report.

4 Q Was there a phone number?

5 A I believe there was an Icelandic phone number, yes.

6 Q Did you try contacting them in any other way than
7 you've already described?

8 A No. Web form and e-mail.

9 Q Did you make any effort to contact Mr. Kazal regarding
10 the website?

11 A No, I never tried to contact him directly.

12 Q If you can turn back to Exhibit 4, which we also looked
13 at a few moments ago.

14 Do you have it in front of you?

15 A Yes.

16 Q Great.

17 Now, you mentioned that Mr. Richards called you
18 and made what you said was a legal threat; right?

19 A It's the impression that I got, yes.

20 Q He told you, didn't he, that the use of the photographs
21 he believed was what he called "fair use"; right?

22 A He did, yes.

23 Q And you also -- you told him that you didn't actually
24 own the copyrights yourself, but you were an IT professional
25 working for Thunder Studios; right?

1 A That's correct.

2 Q You told him that on the phone?

3 A Yes.

4 Q And he says here in the e-mail that we're looking at
5 that we spoke to the complainant, Mr. Paul Kolesa, this
6 morning. He is being copied on this e-mail.

7 The format of this document is a little bit
8 unusual from what we're accustomed to, I think, in terms of
9 e-mails, but were you copied on this e-mail, in fact?

10 A I believe -- yeah, I believe I was.

11 Q Do you recall receiving it at the time?

12 A I'm quite sure I either got it from Mr. Richards or
13 from GoDaddy, yes.

14 Q You said that you first started working with
15 Thunder Studios as a contractor for UTG in June of 2016;
16 right?

17 A Correct.

18 Q And UTG is Mr. Price's company?

19 A That's correct.

20 Q And is that United Technologies Group?

21 A Correct.

22 Q Prior to June of 2016, had you had any involvement
23 whatsoever with Thunder Studios?

24 A Yes. I did smaller contract work with them while I was
25 working with UTG.

1 Q So help me understand what that means.

2 What changed in June of 2016, then?

3 A Well, specifically I performed a penetration test of
4 their site; their physical infrastructure, their IT
5 infrastructure, and their external infrastructure. After
6 completing the test, I was brought on as a contractor so I
7 could implement a remediation strategy.

8 Q And when was this -- what did you call it? A
9 penetration test?

10 A Yes.

11 Q When was that?

12 A That happened in February or March of 2016, I believe.

13 Q And were you physically performing that work at
14 Thunder Studios' office?

15 A The majority of it was performed remotely.

16 Q And in the course of that work starting in, I think you
17 said, February of 2016 --

18 A Yes.

19 Q -- did you have any involvement with the
20 Thunderstudios.com website?

21 A I -- it was within the scope of the penetration test.

22 Q Okay. Did you have any involvement with Thunder
23 Studios' intellectual property?

24 A Not from an administrative standpoint.

25 Q Did you have any involvement with any of the

1 photographs that are -- that Mr. Wiener has showed you
2 today?

3 A No.

4 Q So your responsibilities, which I think you said at the
5 beginning, include now things like intellectual property and
6 content security, that was only added later?

7 A Once I came on as a contractor, that was added.

8 Q In June of 2016?

9 A Correct.

10 Q If we could take a look for a moment back at
11 Exhibit 23.

12 Just looking at the first page for a moment. I
13 believe you testified earlier that the dates that are
14 reflected here are the dates that the respective photographs
15 first appeared on the Thunder Studios' website?

16 A Yeah.

17 Q How do you know that?

18 A I believe I was referencing the dates directly from
19 WordPress at that point.

20 Q Can you explain what you mean by that?

21 A I was logged into the website. I was looking at the
22 file archive, and I was checking their posting dates.

23 Q Now, it appears from looking at this exhibit that
24 certainly on subsequent pages that a lot of the photographs
25 bear dates that predate your involvement with

1 Thunder Studios; is that fair to say?

2 A That's fair to say.

3 Q And it's also fair to say that you didn't take the
4 photographs; right?

5 A Oh, no, I did not.

6 Q And you didn't post them on Thunderstudios.com
7 yourself; right?

8 A No, that was not my job.

9 Q Is it also fair to say that you don't actually know for
10 certain when any of these photographs first appeared on
11 Thunderstudios.com?

12 A No. I have a very good idea of when they appeared on
13 there because of the date stamps on the website.

14 Q You mean in the WordPress account information that you
15 were referencing a moment ago?

16 A Yes. When you go into the content library, I can see
17 dates.

18 Q Can you also see whether any given photograph was
19 posted on a prior iteration of the site, or it was posted
20 previously and then reposted somewhere else?

21 A No. But at that time, I believe I would have been
22 looking at the first iteration of the site.

23 Q But you can't be a hundred percent certain, can you?

24 A I'm quite sure. I can't cite an exact date.

25 Q You mentioned earlier a series of trainings and

1 certifications that you've received, frankly, a lot of which
2 are unfamiliar to me as someone who does not work in your
3 field, but do you have any formal training in web
4 development?

5 A Oh, no. I'm not a front-end developer. I have
6 extensive experience in back-end, like server
7 infrastructure, the underpinnings of websites, the
8 underpinnings of web servers.

9 Q And very briefly and for those of you who are not in
10 your field, can you explain the difference between what you
11 called front-end and back-end when it comes to web
12 development?

13 A Front-end development is everything that you see when
14 you go to access a website. Back-end are the functions that
15 actually make that website work when you're connected to it.

16 Q And as part of your responsibilities at Thunder
17 Studios, are you involved in back-end development of the
18 company website?

19 A No, I'm not.

20 Q Not at all?

21 A No.

22 Q How long have you known Mr. Price?

23 A He's a friend of a friend. I believe I met him in
24 early 2015.

25 Q And when did you start working with his company?

1 A Shortly thereafter.

2 Q Are you still in touch with him?

3 A Not very frequently.

4 Q At any point, did you become aware that Mr. Price had
5 registered a series of websites in the name of the Kazal
6 family, including, for example, Charifkazal.com,
7 Adamkazal.com, Carlkazal.com?

8 A I was aware of every website that Matt had registered
9 because I handled security updates on most of them.

10 Q What does that mean?

11 A Making sure that plug-ins and core operations of the
12 website are up to date, making sure that SSL certificates
13 are up to date. Minor maintenance.

14 Q So you were aware of the existence of the websites I
15 just mentioned because Mr. Price gave you responsibility for
16 the security items you just mentioned; right?

17 A Yeah.

18 Q And when did you become aware of the existence of those
19 websites?

20 A I don't have an exact date on that. Out of all the
21 websites that he had registered, I have to take care of the
22 security on all of them. I can't quote an accurate date.

23 Q Would that have been in 2016?

24 A Yeah, probably.

25 Q Did you ever discuss with Mr. Price the content of

1 those websites?

2 A Honestly, the content of the websites was irrelevant to
3 my job.

4 Q I understand that, but did you and he ever discuss it?

5 A Not really.

6 Q Not really. Or no?

7 A No.

8 Q Did you ever discuss with him anything about the Kazal
9 family at all?

10 A I did independent research.

11 Q So you saw that there were these domains among the
12 websites that Mr. Price had registered and you wanted to
13 find out who these people were; right?

14 A I've heard the name before, and I've read up on some
15 news articles.

16 Q So you had heard the name before these websites came
17 into existence?

18 A Oh, no. Probably not.

19 Q So you heard the name from the existence of these
20 websites?

21 A I guess that's fair to say, yes.

22 Q And what research did you do?

23 A I just looked for news articles online, just a little
24 bit of reading.

25 Q Now, at the time, I guess around 2016, you were -- was

1 it the case that you were working on a day-to-day basis with
2 Mr. Price?

3 A Around what time?

4 Q In 2016.

5 A In 2016. Not for all of 2016. Toward the middle to
6 end of 2016, that became less and less because Mr. Price
7 became ill, had a problem with a family member and ended up
8 moving.

9 Q At the time you became a contractor for Thunder Studios
10 in June of that year, did your work transition to being
11 mostly on site at the studio?

12 A It was a mix of remote work and on-site work.

13 Q How would you break it down? Like 50-50?

14 A 50-50, yeah.

15 Q Did you ask Mr. Price why he had set up these websites
16 in the name of the Kazal family?

17 A No.

18 Q Did you find it odd?

19 A Not really.

20 Q Why not?

21 A There's lots of odd websites out there. It didn't
22 strike me as anything off-color.

23 Q Had Mr. Price, as you'd been aware of -- well, I guess
24 you would know because you said you were in charge of
25 security for all of his domains -- had he set up any

1 websites that you're aware of in the names of any other
2 families that you were not familiar with?

3 A No. Mostly the others were company names.

4 Q Company names. So the only family that you can recall
5 among those domains is the Kazal family; right?

6 A As far as I can recall, yeah.

7 Q Now, as part of your responsibility for security
8 related to these websites, you would correspond from time to
9 time with the server company that hosts the site; right?

10 A Yeah.

11 Q Including companies like GoDaddy, DreamHost, things
12 like that?

13 A I believe most of the sites were on a DreamHost
14 account.

15 Q Are you talking about the Kazal sites or in general?

16 A Most of the UTG site, they were hosted on DreamHost.

17 Q And that would be because that's where Mr. Price
18 preferred to have them hosted; right?

19 A I believe so, yeah.

20 Q And it's true, isn't it, that you corresponded with
21 DreamHost directly yourself with respect to a technical
22 issue related to the Adamkazal.com website; right?

23 A Yeah.

24 Q Now, in the course of your work, starting as a
25 contractor in June of 2016, until I guess you said around

1 November, you became an employee of Thunder Studios?

2 A That's accurate, yeah.

3 Q During that time, I guess about four or five months,
4 did you have occasion to interact with and speak with
5 Mr. David, Mr. Rodric David?

6 A Not frequently, but, yes.

7 Q And you would speak to him about things like technical
8 issues --

9 A Just high level about my work around the studio.

10 Q And were those interactions mostly you approaching him
11 with some discussion about your work, or would he come to
12 you and ask you some questions about what you were doing?

13 A It could have been a mix. I didn't report directly to
14 him, so normally it would either be a passing conversation
15 or me speaking to him.

16 Q Did you ever discuss the existence of these five
17 websites, the Kazal family websites, that Mr. Price
18 registered with Mr. David himself?

19 A No.

20 Q Never?

21 A No.

22 Q So you don't know one way or the other, do you, whether
23 Mr. David was aware of the existence of those websites in
24 2016?

25 A I couldn't say for sure.

1 Q Now, in 2016, you did some independent research and you
2 learned that the Kazal family had some business dispute with
3 Mr. David; right?

4 A Yes.

5 Q And you learned that from your own Google research;
6 right?

7 A Yes.

8 Q So to be clear, it's your testimony that you and
9 Mr. Price were both working for Thunder Studios and were
10 both involved with the Kazal family websites, but you never
11 discussed that fact with Mr. David?

12 A No, didn't have to.

13 Q You testified a few minutes ago about your observation
14 of the protestors who appeared outside Thunder Studios in
15 October of 2016?

16 A Uh-huh.

17 THE COURT: Is that "yes"?

18 BY MR. TAYLOR:

19 Q You have to answer "yes" or "no," so the reporter can
20 get what you're saying.

21 When you passed the protestors as you entered the
22 parking lot, you were in your vehicle; right?

23 A Correct.

24 Q I think you said they were yelling -- you could hear
25 them because there were a number of them, and they were

1 yelling; right?

2 A It was muffled. My windows were up, but, yes, there
3 were a number of them, and they were yelling.

4 Q Now, did you have any interaction with them, other than
5 what you just described?

6 A No, I didn't speak to them.

7 Q So you parked and got out of your car, and then you
8 went into the building?

9 A Yes.

10 Q So it's fair to say that you had no fear for your
11 personal safety from those protestors out on the sidewalk;
12 right?

13 A I wasn't fearful, but I found it extremely strange. I
14 thought that it could possibly have an impact on business;
15 ergo, have an impact on my life.

16 Q Now, the protestors that were outside the gates that
17 morning, they didn't try to block you from getting into the
18 parking lot; right?

19 A I was coming in kind of quick. They moved.

20 To my understanding, they did block a delivery
21 from coming in, though.

22 MR. TAYLOR: Nothing further right now,
23 Your Honor. Thank you.

24 THE COURT: All right. Any further examination,
25 Mr. Wiener?

1 MR. WIENER: No redirect, Your Honor.

2 THE COURT: All right. May this witness be
3 excused?

4 MR. WIENER: Yes.

5 THE COURT: All right. Thank you, sir. You may
6 step down.

7 Ladies and gentlemen, why don't we take our
8 afternoon recess.

9 Let's take 15 minutes if we could.

10 Please do not form or express any opinion about
11 the case until the matter is finally submitted to you.

12 Don't talk with anyone about the case, don't allow
13 anyone to talk to you about the case, and please do not
14 conduct any research of any kind on any subject matter
15 connected with this case.

16 We'll see you at 3:45. We'll go for one more
17 hour, and then we'll wrap up for the day.

18 Thank you.

19 (Jury out.)

20 THE COURT: All right. Counsel, what's next after
21 the break?

22 MR. WIENER: We have two depositions --

23 THE COURT: I'm sorry. Are you saying something?

24 MR. WIENER: You got me. I got six hours. The
25 parties have two deposition transcripts to read into the

1 record which should take approximately the remainder of
2 today.

3 THE COURT: Have you both agreed as to what you're
4 going to read into the record?

5 MR. WIENER: We've agreed as to sections, not as
6 to who will read and who will answer. So I was going to
7 confer with Mr. Taylor about that.

8 THE COURT: As it relates to the first part of my
9 question, have you agreed, Mr. Taylor, as to what is going
10 to be read into the record?

11 MR. TAYLOR: Oh, yes, we have, Your Honor. We've
12 marked the transcript with different colors so it's clear
13 who's marked what, and I don't think there are any
14 objections.

15 MR. WIENER: No objections.

16 MR. TAYLOR: I think we have to figure out the
17 dynamics of how it will actually be done, but I think that
18 will be simple enough.

19 THE COURT: All right. So you've got 15 minutes
20 to figure that out. Then, we'll come back at 3:45, and you
21 can read it however you all decide to do it.

22 MR. TAYLOR: May we stand and just read it at the
23 lectern?

24 THE COURT: Yes.

25 (Recess taken at 3:34 p.m.;

1 proceedings resumed at 3:54 p.m.)

2 THE COURT: All right. Mr. Wiener, you want to
3 call your next witness.

4 MR. WIENER: Yes, Your Honor. The next witness
5 will be a reading from the teleconference deposition of
6 Adam Kazal of October 25th, 2018.

7 THE COURT: All right. You may step to the
8 lectern.

9 Ladies and gentlemen, you are about to hear the
10 reading of deposition testimony.

11 Deposition testimony is the same as trial
12 testimony. The witnesses are put under oath, and they are
13 also cross-examined as well.

14 So you're going to hear deposition transcript
15 testimony that's been designated by both sides. You should
16 assume, A, that would be the testimony at trial if they
17 testified here in front of you and you are not to draw any
18 negative by the fact that the witness is not here live and
19 in person.

20 With that, Mr. Wiener, you may proceed.

21 MR. GEBELIN: Your Honor, may I approach? I'm
22 going to be reading the witness's portions.

23 THE COURT: Okay. You may.

24 MR. WIENER: The first excerpt, Your Honor, is
25 page 18 -- page 14, lines 18 through 20.

1 THE COURT: All right.

2 MR. WIENER: (Reading.)

3 "Q Have you ever been to California?

4 "A Never."

5 MR. WIENER: Are you familiar with your -- strike
6 that.

7 The next excerpt is page 14, line 24, page 15,
8 line 11. (Reading.)

9 "Q Could you tell me what you understand about
10 your family's prior business dealings with Mr. David?

11 "A No. I don't have indefinite detail, but I
12 have headlines of what's going on. I know back -- the
13 guy was involved with them in some kind of business,
14 and he ended up being the biggest thief, and he
15 troubled them and defamed the whole family for the last
16 seven, eight years.

17 "Q Have you ever met Mr. David in person?

18 "A Never."

19 MR. WIENER: And, Your Honor, lines 10 and 11 are
20 a question, but the answer is not part of the designated
21 testimony, so I'm going to skip the question.

22 The next excerpt is page 16, lines 3 to 5.
23 (Reading.)

24 "Q Are you familiar with the website
25 Kazalfamilystory.com?

1 "A Yes, I am familiar of it."

2 MR. WIENER: Next excerpt is page 16, lines 18 to
3 22. (Reading.)

4 "Q Do you know when the website was created?

5 "A No idea.

6 "Q Do you know who the owner of the website is?

7 "A I have no idea to be honest with you."

8 MR. WIENER: The next excerpt is page 16, line 25
9 to page 17, line 8. (Reading.)

10 "Q Have you had any involvement with any of the
11 materials on the website?

12 "A No.

13 "Q Do you know -- have you ever heard of a
14 person named Joe Dabab?

15 "A What's the name?

16 "Q Have you ever heard of Joe Dabab, D-a-b-a-b?

17 "A No, not at all."

18 MR. WIENER: The next excerpt is page 17, line 22,
19 to page 18, line 1. (Reading.)

20 "Q So if I showed the jury an affidavit that has
21 your signature on it that says the website -- Charif
22 controls the content of that website, then, you would
23 admit that's a true statement?

24 "A I will say yes."

25 MR. WIENER: Next excerpt is page 18, lines 5 to

1 9. (Reading.)

2 "Q Do you know which persons put the content of
3 the website up?

4 "A Like I said earlier, I have nothing to do
5 with the website, so I wouldn't have a clue. You can
6 always ask Charif for that."

7 MR. WIENER: Next excerpt is page 18, lines 10 to
8 14. (Reading.)

9 "Q Do you know if on December 6th, 2016, the
10 federal court of Australia issued an order that
11 restrains you from making any statements about Rodric
12 David?

13 "A They did, and I commit what they said.

14 "Q Can you repeat the last thing you said?

15 "A I said yes, and I commit --"

16 THE COURT: I'm sorry. You just said the excerpt
17 was lines 10 through 14?

18 MR. WIENER: I read over. So it should be: "They
19 did, and I commit what they said." And anything after that
20 should be stricken.

21 THE COURT: All right.

22 MR. WIENER: The next excerpt is page 18, line 20
23 to line 23. (Reading.)

24 "Q Do you know if you were ever found in
25 contempt of court by the federal court of Australia?

1 "A Yes."

2 MR. WIENER: Next excerpt is page 20, line 21 to
3 page 22, line 6. (Reading.)

4 "Q What was the reason you were found in
5 contempt of court?

6 "A Oh, the reason. There's something --
7 something still on the van, like the website. One of
8 them was an e-mail I sent to -- there's couple things,
9 but I don't recall the whole thing at the moment. Most
10 of them fabricate things and then look, he's contempt
11 of order. But it was a setup.

12 "Q All right. How much time did you spend in
13 jail?

14 "A Sixteen months.

15 "Q What jail were you incarcerated at?"

16 THE COURT: Counsel, I thought you said you were
17 going to end at line 6?

18 MR. WIENER: It's page -- line 6 of page 22,
19 Your Honor.

20 THE COURT: I'm sorry. My mistake.

21 MR. WIENER: (Reading.)

22 "Q What jail were you incarcerated at?

23 "A What's that? Sorry, sir.

24 "Q What jail were you in?

25 "A I was what?

1 "Q What jail were you incarcerated at?

2 "A At the minimum.

3 "Q Say it again?

4 "A They call them, like in a jail, what you call
5 it in Australia. It is a minimum jail. Not like a
6 high-risk prisoner or anything, just in jail for
7 contempt of order. Very civil. End of a civil matter.

8 "Q Did you have a Twitter account, Mr. Kazal?

9 "A Yes.

10 "Q Did you have any YouTube accounts?

11 "A No.

12 "Q Did you have any Pinterest accounts?

13 "A No.

14 "Q No?

15 "A No.

16 "Q All right. Did you make any postings on
17 Twitter about Rodric David?

18 "A Say that again.

19 "Q Did you make any postings on Twitter
20 regarding Rodric David?

21 "A Not me."

22 MR. WIENER: Next excerpt is page 22, lines 5 to
23 17. (Reading.)

24 "Q You did not?

25 "A No, I did not in person.

1 "Q All right. Did anyone else have access to
2 your Twitter account?

3 "A There's a friend of mine named Georges
4 Elaiss. He's normally helping me out. I'm not very
5 good when it comes to computers and all that.

6 "Q The person that used your Twitter account was
7 George White?

8 "A Georges Elaiss."

9 MR. WIENER: All right. The next excerpt is
10 page 23, line 7, to line 14. (Reading.)

11 "Q What activities did you do on your Twitter
12 account?

13 "A Nothing.

14 "Q Why did you give George Elaiss access to your
15 Twitter account?

16 "A Because he know how to do it better than me.
17 I don't understand what it is when it comes to latest
18 technology."

19 MR. WIENER: Next excerpt is page 24, line 8, to
20 page 25, line 2.

21 "Q Who told Georges Elaiss to make those
22 postings?

23 "A Before those, I did.

24 "Q Why did you tell him to make postings about
25 Rodric David?

1 "A Because Rodric David was defaming my name and
2 my family's name six months before I was defaming him.
3 I was doing it to defend myself and bring the truth
4 out.

5 "Imagine when you have kids at home and you are
6 coming home and your son, 12 years old and 13 years old,
7 asking me why my friends keep saying you on the website are
8 saying this or that. I have no answers because I don't know
9 where they come from.

10 "When I find out where they come from, I have
11 nothing to do with these guys. I have absolutely nothing to
12 do with them. So I have to do something to defend myself
13 and bring the truth out and make him stop defaming me.
14 That's what it is all about."

15 MR. WIENER: Next excerpt is page 25, line 24 to
16 page 26, line 13. (Reading.)

17 "Q Mr. Kazal, did you ever make threats of
18 violence against Rodric David's father?

19 "A Not at all.

20 "Q Was a restraining order issued against you in
21 2013?

22 "A Actually this, you just mentioned now,
23 restraining order. Jamal himself -- you call him
24 John David -- he actually said -- the police ask him --
25 it was in the script. The police, did you ever feel

1 afraid by Mr. Kazal? He said, no, not at all.

2 "But the restraining order was issued because at
3 the time I came to the police office and asked to speak to
4 him, just, you know, get the record straight. Because his
5 son used a journalist, Linton Besser."

6 MR. WIENER: Next excerpt is page 29, line 16 to
7 page 32, line 9. (Reading.)

8 "Q Did you publish posters regarding Rodric
9 David in Australia in October 2016?

10 "A Yes, I did.

11 "Q Do you recall what the posters said?

12 "A I can't remember, but I believe they were
13 discreet and some were in the streets of Australia.

14 "Q Did the poster say that, quote: Expose the
15 corporate thieves. Rodric David, David Singh robbed
16 their business partners of \$180 million. Don't be
17 their next victim. Read the whole story,
18 www.kazalfamilystory.com. Care of Adam Kazal?

19 "A Yes, it is me.

20 "Q Who created the text?

21 "A I did.

22 "Q Why did you reference Kazalfamilystory.com?

23 "A Because, as I said earlier, he published me.
24 He put a website up in my name. And for me, looking at
25 the family website, I view the whole story is there.

1 So I don't have to say more. So I need to point
2 people. Instead of him defaming me. It is not me, it
3 is him.

4 "Q Did you also hire a white van to be
5 circulated in Sydney in October in 2016?

6 "A I did not.

7 "Q And did they have a sign that says: Expose
8 the corporate thieves? Robster Rodric David, Robster
9 David Singh robbed their business partners of
10 180 million. Don't be their next victim. Read the
11 full story at www.kazalfamilystory.com. Rodric David,
12 con artist, and David Singh, con artist, end quote.

13 "A Yes, I did that.

14 "Q Are you familiar with a company named Street
15 Promotions Australia PTY Limited?

16 "A Yes. I asked them to help me on that.

17 "Q Who did you work with at Street Promotions
18 Australia PTY Limited?

19 "A PTY -- the person is Israel.

20 "Q Is the person's name Israel Lacey?

21 "A Yes, that's the one.

22 "Q All right. Did they create the posters for
23 you?

24 "A Yes, they did.

25 "Q Did they also create flyers for you?

1 "A Yes, they did.

2 "Q Were they responsible for distributing the
3 flyers in Sydney in November of 2016?

4 "A Yes, they are.

5 "Q How many flyers were distributed?

6 "A I'll be honest with you, at this time I don't
7 have the proper numbers, but I think it was enough for
8 him to be exposed.

9 "Q Would it be 35,000 flyers that they prepared?

10 "A It could be.

11 "Q Right. Did you also hire Street Promotions
12 Australia PTY Limited to prepare 2,000 posters of
13 Rodric David?

14 "A Yes, I did."

15 THE COURT: Counsel, I'm sorry. Did you -- did
16 you skip over a response?

17 MR. WIENER: There's a response, "I don't know at
18 this moment" that wasn't read where I said "right."

19 THE COURT: So can you start back at --

20 MR. WIENER: Sure, I'll back it up.

21 Reading from page 31, line 23. (Reading.)

22 "Q Would it be 35,000 flyers that they prepared?

23 "A It could be.

24 "Q Right.

25 "A I don't know at the moment.

1 "Q Did you also hire Street Promotions Australia
2 PTY Limited to prepare 2,000 posters of Rodric David?

3 "A Yes, I did. Like I said in the beginning, I
4 just want him to give me my identity back. I just want
5 him to stop, be silent, and give me my identity back.
6 That's all I was doing."

7 MR. WIENER: Next excerpt is page 32, line 25 to
8 page 33, line 9. (Reading.)

9 "Q Did you decide at some point in 2016 to
10 escalate your protest against Mr. David?

11 "A Yes, I did.

12 "Q Why did you decide to do that?

13 "A Because he refused to stop defaming me and
14 give me my identity back. I asked very nice.

15 "Q All right. Did you also make a demand that
16 Mr. David pay you \$666,666.66?

17 "A Honestly, I don't remember that, but
18 something like this, yes, I did that. Why don't you
19 read the e-mail first. Why don't you go to the e-mails
20 and go to the point."

21 MR. WIENER: Next excerpt is page 34, line 17 to
22 page 35, lines 17 -- sorry. Next excerpt is page 34,
23 line 17 to page 35, line 17. (Reading.)

24 "Q Who paid for the activities in Australia?

25 "A Sorry. What's that again?

1 "Q Who paid for the postering campaign?

2 "A I did.

3 "Q Where did you get the money?

4 "A I won the money in the horse race. I won
5 some money in a horse race, and I won the money on it,
6 and I think it was money to be used to clean my name.
7 So that's where the money came from.

8 "Q That's the source of funds that you used for
9 the California activities?

10 "A What's that again?

11 "Q That's the same source of funds that you used
12 for the activities in Sydney and also paid for
13 California?

14 "A I can guess. But it's been a long time now.

15 "Q How much did you win in this horse race?

16 "A I can't remember. But it was enough to cover
17 the whole thing.

18 "Q Did you win it all in one race?

19 "A Honestly, I cannot remember, but, yeah, I
20 think so.

21 "Q Where did the horse race take place?

22 "A It's been a long time. Like I said, I can't
23 remember."

24 MR. WIENER: Page 36, line 3 to page 36, line 14.

25 (Reading.)

1 "Q Do you recall what the horse track was?

2 "A No, I don't remember. Again, it is
3 irrelevant. Get to the point of what you really want
4 to get to, what you'd really like to achieve.

5 "Q What I'm really trying to find out of this
6 questioning is who actually paid for this. I simply
7 don't think it's plausible that you won a bunch of
8 money at a horse race. I'm trying to find out the
9 details about your testimony. I'm trying to find out
10 if it is true.

11 "A It is true.

12 "Q I haven't heard anything about this horse
13 race.

14 "A Listen, it is true and real."

15 THE COURT: Counsel, I'm sorry. I thought you
16 said to line 14.

17 MR. WIENER: Yeah, I apologize. It should have
18 ended at "It is true." Strike the question, "I haven't
19 heard anything about this horse race."

20 The next excerpt is page 36, line 3, to page 36 --

21 THE COURT: You just read that.

22 MR. WIENER: Yeah, sorry.

23 Next, excerpt is page 37, line 3 to line 6.

24 (Reading.)

25 "Q Is it your testimony that you're the only

1 person who paid for the protest activities in Sydney
2 and California?

3 "A Yes, it is."

4 MR. WIENER: Next excerpt is page 40, lines 18 to
5 23. (Reading.)

6 "Q Do you know if Rodric David has children?

7 "A No.

8 "Q Did you make any efforts to find out if
9 Rodric David has children?

10 "A No."

11 MR. WIENER: Last excerpt is page 41, line 24 to
12 page 42, line 10. (Reading.)

13 "Q How much did you pay for Mark Woodward?

14 "A Honestly, I can't remember now.

15 "Q How did you select Mark Woodward?

16 "A E-mail.

17 "Q How many hours of video surveillance were
18 conducted? Do you know?

19 "A I don't know. I was just to find out who was
20 behind the website. There's no pictures, no video, no
21 nothing.

22 "Q The source of funds used to pay for the
23 surveillance were from a horse race?

24 "A I think so, yes."

25 MR. WIENER: End of testimony.

1 THE COURT: All right. Thank you, sir. You may
2 step down.

3 All right. You have some deposition transcripts
4 that you wish to read at this time, Mr. Taylor?

5 MR. TAYLOR: Yes, I'm going to read from the
6 deposition of Tony Kazal.

7 THE COURT: All right.

8 MR. TAYLOR: May I approach the witness box?

9 THE COURT: Yes, please.

10 All right. So, Ms. Bani-Esraili, you may proceed.

11 MS. BANI-ESRAILI: The first excerpt is page 6/25,
12 to page 7, line 21. (Reading.)

13 "Q All right. Can you state your full name for
14 the record.

15 "A Tarek Kazal. Also known as Tony Kazal.

16 "Q Can you state your residential address?

17 "A Yes. Resident of United Arab Emirates,
18 Dubai. I live in JLT. And building name, Jamera Lake
19 Towers, Number 28, in Apartment 28080, Box 50.

20 "Q Could you state your occupation?

21 "A I am a company director. I have a company
22 based in Dubai.

23 "Q What is the name of the company?

24 "A AWT Dubai.

25 "Q AWT?

1 "A Dubai.

2 "Q What is your function as a company director?

3 "A Consultancy.

4 "Q What kind of consulting do you do?

5 "A I work with a company in Africa.

6 "Q Who? What's the nature of the consulting
7 services that you provide?

8 "A Business development."

9 MS. BANI-ESRAILI: Next excerpt is page 10, line 3
10 to line 10. (Reading.)

11 "Q All right. Do you know a person named
12 Rodric David?

13 "A Yes.

14 "Q How do you know Mr. David?

15 "A Sorry?

16 "Q How do you know Rodric David?

17 "A Yes, Rodric, yes, of course, I know him. He
18 was a business partner."

19 MS. BANI-ESRAILI: Next excerpt is page 11,
20 line 11 to line 14. (Reading.)

21 "Q Did you ever cause a criminal complaint to be
22 made against David in United Arab Emirates?

23 "A It was a few places. Again, one for neglect,
24 one for fraud, visa."

25 MS. BANI-ESRAILI: Next excerpt is page 14,

1 line 21 to page 15, line 16. (Reading.)

2 "Q Are you familiar with Kazalfamilystory.com
3 website?

4 "A Yeah.

5 "Q What do you know about the website?

6 "A Well, I think this website, my brother Charif
7 and his side of the story.

8 "Q Do you know when the website was created?

9 "A No, actually. Years back, you know.

10 "Q Do you know who the owner of the website is?

11 "A I don't know, man. You can ask him. He's
12 the one in charge.

13 "Q What do you mean by Charif is the one in
14 charge?

15 "A He's the one who write it. He wrote it.

16 "A Do you know Jean Ghalo?

17 "A No.

18 "Q Do you know a person named Joe Dabab?

19 "A Who?

20 "Q Joe Dabab?

21 "A I met him."

22 MS. BANI-ESRAILI: Next excerpt is page 16,
23 line 10 to line 25. This is Mr. Wiener speaking.
24 (Reading.)

25 "Q Did you author any of the content on

1 Kazalfamilystory.com?

2 "A Maybe one of the e-mails -- I'm sorry. Maybe
3 one of the e-mails, my e-mails, but not me.

4 "Q Did you write any of the e-mails on the
5 website?

6 "A Sorry?

7 "Q Did you write any of the e-mails on
8 Kazalfamilystory.com?

9 "A My e-mails only, sir, which I was saying, you
10 should ask my brother Charif.

11 "Q Who did you send these e-mails to besides
12 Rodric David and Charif?

13 "A People in Thunder Studios, to my memory,
14 to -- I don't know. I can't remember now, but I would
15 say a few people, Thunder Studios people."

16 MS. BANI-ESRAILI: Next excerpt is page 18, line 2
17 to line 9. (Reading.)

18 "Q Did you ever see any stories of Rodric David
19 on Kazalfamilystory.com?

20 "A I'm sorry. Oh, yeah.

21 "Q Do you know where those photos came from?

22 "A No, I don't know.

23 "Q Did you ever have any involvement in choosing
24 the photos on the website?

25 "A No."

1 MS. BANI-ESRAILI: Next excerpt is page 19, line 9
2 through 19. (Reading.)

3 "Q The e-mails that you sent, did you write them
4 or did someone else do them for you?

5 "A I write them and sometimes I have an
6 assistant, you know.

7 "Q Who assisted you with writing the e-mails?

8 "A Various.

9 "Q I'm sorry. Can you say that again?

10 "A That's me. Me. I'm busy. I'm traveling."

11 THE COURT: I'm sorry. I need to stop you there.
12 After the question, "Who assisted you with writing the
13 e-mails," what was the answer?

14 THE WITNESS: There was an errata that's at the
15 back, so that should be "various."

16 THE COURT: All right. Go ahead.

17 MS. BANI-ESRAILI: (Reading.)

18 "Q I'm sorry. Can you say that again?

19 "A That's me. Me. I am busy. I am traveling.

20 "Q So what is the name of the person that helps
21 you write the e-mails?

22 "A Me. I told you me."

23 MS. BANI-ESRAILI: Next excerpt is page 21,
24 line 10 through line 13. (Reading.)

25 "Q Do you know how the photos were obtained?

1 "A Not at all. To make it easier and save time,
2 I have nothing to do with the website."

3 MS. BANI-ESRAILI: Next excerpt is page 21,
4 line 19, through line 21.

5 "Q Mr. Kazal, do you agree that your e-mails are
6 posted on Kazalfamilystory com?

7 "A Yes."

8 MS. BANI-ESRAILI: Next excerpt is page 22, lines
9 3 through 5. (Reading.)

10 "Q Did you make any effort to determine if the
11 photos on the website were copyrighted?

12 "A No."

13 MS. BANI-ESRAILI: Next excerpt is page 22,
14 lines 8 through 9. (Reading.)

15 "Q Do you know who paid for the website?

16 "A No. I am not involved in the website."

17 MS. BANI-ESRAILI: Next excerpt is page 22,
18 lines 19 through 21. (Reading.)

19 "Q Did you make posts about Rodric David on
20 Twitter?

21 "A Yes, sometimes."

22 MS. BANI-ESRAILI: Next excerpt is page 24,
23 lines 5 through 14. (Reading.)

24 "Q Do you have any knowledge of surveillance
25 that was conducted on Rodric David in Australia?

1 "A Australia -- when he robbed me, when he
2 robbed my shares, I did engage a professional -- not
3 surveillance, investigation. I don't know
4 surveillance. I did investigation. I engaged an
5 investigation company to give me information on the guy
6 who robbed me. I think Government do that, everybody
7 do that. It is professional. It is very lawful to do
8 it."

9 MS. BANI-ESRAILI: Next excerpt is page 27,
10 lines 5 through 7. (Reading.)

11 "Q Did you find out how Adam paid for the pole
12 and poster campaign?

13 "A I don't know."

14 MS. BANI-ESRAILI: Next excerpt is page 28,
15 lines 3 through 11.

16 "Q Do you know of any e-mails that said Rodric
17 David was a despicable thief?

18 "A He is a thief.

19 "Q Did any of your e-mails say that?

20 "A He's a thief. Whatever name in the
21 dictionary that can make accountable to him. The
22 amount of documents he fraud and the lies he put on,
23 his actions is saying something not happened. His
24 actions, and he's fraudulent."

25 MS. BANI-ESRAILI: Next excerpt is page 28,

1 lines 12 through 19. (Reading.)

2 "Q Did you have any knowledge about any
3 surveillance that was done on Rodric David that was
4 done in California in 2016?

5 "A Not at all.

6 "Q Are you aware that anything was sent to you
7 by a private investigator named Mark Woodward in 2016?

8 "A Not at all."

9 MS. BANI-ESRAILI: That is the end of the
10 testimony.

11 THE COURT: All right. Thank you. You can step
12 down.

13 Is there any further deposition testimony that
14 needs to be read into the record?

15 MR. WIENER: No, Your Honor. We'd like to read
16 into -- one single interrogatory response.

17 THE COURT: All right. You may proceed.

18 MR. WIENER: It's Exhibit 37, Tony Kazal's First
19 Supplemental Responses and Objection to Rodric David's First
20 Set of Interrogatories which is verified under penalty of
21 perjury by Tony Kazal on May 2nd, 2018, in Sydney,
22 Australia.

23 Your Honor, I'd like to move this interrogatory
24 response into evidence.

25 THE COURT: All right. Any objection? The entire

1 set of interrogatories?

2 MR. WIENER: Just Interrogatory Number 3,
3 Your Honor, and the verification page.

4 So it would be pages 4 and 7.

5 THE COURT: And will there be a redacted portion
6 that gets introduced in evidence so just have the response
7 to Interrogatory Number 3? Or how do the parties propose to
8 deal with this when there's other interrogatory responses on
9 that page, if I'm looking at the right page.

10 MR. WIENER: We will provide a redacted copy for
11 the jury.

12 THE COURT: Any objection to the introduction of
13 simply the response to Interrogatory Number 3 contained in
14 Exhibit 37?

15 MR. TAYLOR: No objection, Your Honor.

16 THE COURT: So that exhibit as redacted will be
17 admitted.

18 Do you want to read that response at this time for
19 the record.

20 MR. WIENER: I'll read both the interrogatory and
21 the response. Interrogatory Number 3 states: Identify all
22 communications you made regarding plaintiffs between
23 January 1st, 2013, and the present.

24 The response to Interrogatory Number 3 states: I
25 refer you to the produced post from

1 www.kazalfamilystory.com, supplied by Joe Dabab which
2 represents all content from --

3 THE COURT: Counsel, slow down.

4 MR. WIENER: Sure. I'll begin again.

5 I refer you to the produced post from
6 www.kazalfamilystory.com supplied by Joe Dabab, which
7 represents all content from the now closed website. The
8 referred content was publication of e-mails sent to the
9 plaintiff and his associates at Thunder Studios by
10 Charif Kazal and Tony Kazal.

11 I used to send Mr. Joe Dabab a copy of what was
12 sent to Rodric David or David Singh. Once uploaded to the
13 website, I would delete the e-mails and Mr. Joe Dabab only
14 preserved the website content.

15 End of interrogatory response.

16 THE COURT: All right. So that testimony is now
17 in the record.

18 Does the defense wish to introduce any
19 interrogatory responses at this time?

20 MR. TAYLOR: No, we do not, Your Honor.

21 THE COURT: Anything further, Mr. Wiener?

22 MR. WIENER: No, Your Honor.

23 THE COURT: So are we done with the testimony for
24 today?

25 MR. WIENER: We are, Your Honor.

1 THE COURT: All right. Let me have the parties
2 approach sidebar, please.

3 (Sidebar conference, reported.)

4 THE COURT: I just want to make sure there's no
5 further depo testimony, no further interrogatories. There's
6 only a witness for the plaintiff left, Mr. Woodward, on
7 Monday. I'm sorry. Do you have another witness that you
8 wish to call?

9 MR. WIENER: Michael Hammond on Monday.

10 THE COURT: Michael Hammond on Monday. Okay.

11 And then you have Woodward on Monday and
12 Mr. Kazal?

13 All right. So I'm going to excuse the jurors for
14 today, and we'll talk about how we're going to proceed
15 afterwards.

16 (End of sidebar conference.)

17 THE COURT: All right. Ladies and gentlemen of
18 the jury, we have concluded our testimony for today so
19 you're going to get to leave a little bit earlier, so
20 hopefully -- it's stopped raining so hopefully the traffic
21 won't be too bad. We're going to resume back on Monday at
22 9:00 a.m.

23 I am cautiously -- and this is cautiously
24 optimistic that we will conclude all the testimony on Monday
25 with an eye toward having closing argument on Monday so you

1 can begin your deliberations. If not Monday, certainly
2 Tuesday morning, but I'm going to push very hard to try to
3 get that done by Monday.

4 As I've said to you repeatedly, please do not form
5 or express any opinion about this case until the matter is
6 finally submitted to you.

7 Please don't talk with anyone about this case,
8 don't allow anyone to talk to you about the case and please
9 do not conduct any research of any kind on any subject
10 matter connected with this case.

11 I emphasize those words because I know there's a
12 long recess, and I don't want temptation to get the best of
13 you. No research of this case at all on the Internet. At
14 all. Please, please, please. If it happens, that would
15 cause a mistrial, and we'd have to do this all over again.
16 And if it happens, I will make you all come back and do it
17 again. I'm just kidding on that part, but...

18 Please do not conduct any research of any kind
19 connected with this matter.

20 I will see you next Monday. Enjoy your weekend.
21 Thank you.

22 (Jury out.)

23 THE COURT: All right. A couple of things.
24 Plaintiff, you have three hours, 45 minutes and 20 seconds.
25 Defense, you have three hours, 46 minutes and 31 seconds.

1 Having said that, I'm going to urge you, urge you
2 all to wrap this up on Monday. We are taking far too much
3 time, in my opinion, on cumulative testimony. So keep that
4 in mind, number one.

5 Number two, just informing the defense, I'm going
6 to be as equally harsh on you as I was with the plaintiff.
7 If you get witnesses up here that engage in narrative
8 testimony, I'm going to shut it down immediately. I was far
9 too kind with the plaintiff. I'm not going to tolerate with
10 the defense in the interest of time because I want this case
11 to be done. You have time now. You have two, three days to
12 prep your witnesses.

13 You have been warned. I will interrupt in the
14 middle of a response if the witness is engaged in narrative
15 testimony. Question/answer. That's your job.

16 I'm not blaming the witnesses, I'm blaming the
17 lawyers because you all know or should know what's expected
18 in a courtroom, particularly a federal courtroom.
19 Question/answer/question/answer. That's your
20 responsibility, and I expect you to abide by those rules.

21 Do you have any question about that, Mr. Taylor or
22 Ms. Bani-Esraili?

23 MR. TAYLOR: No questions, Your Honor.
24 Understood.

25 THE COURT: On Monday, just so I'm clear,

1 Mr. Hammond is going to be called first?

2 MR. WIENER: Yes, Your Honor.

3 THE COURT: And then after Mr. Hammond, the
4 plaintiff will rest presumably?

5 MR. WIENER: Yes, Your Honor.

6 THE COURT: Then, the defense will begin their
7 case. You're going to call Mr. Woodward.

8 Who else did you say?

9 MR. TAYLOR: Mr. Kazal.

10 THE COURT: Mr. Kazal. And then I thought there
11 was one other witness.

12 MR. TAYLOR: Yes, Mr. Parlato.

13 THE COURT: I'm sorry. Can you spell that?

14 MR. TAYLOR: Sure. Last name P-a-r-l-a-t-o.

15 THE COURT: And over the weekend, I would ask that
16 you all revisit looking at the verdict form. If you cannot
17 come up with a resolution, I will come up with one, but it
18 seems to me you're asking this jury a lot based on the
19 verdict form that you've submitted. But if that's what you
20 want to do, then that's what will get submitted.

21 I am inclined, just so the parties know, to break
22 this up into two phases so that there's the question that
23 asks whether the conduct was done with malice, et cetera --
24 let me pull it up so I have it handy here.

25 I believe it was question -- I guess starting with

1 Question 9. What I've done in the past is I asked the
2 question in the first phase: Did, in this case, Charif
3 Kazal engage in conduct with malice, oppression or fraud?
4 If they answer that question "yes" as it relates to any of
5 the defendants, then there will be a phase two to argue over
6 punitive damages. What I've done in this courtroom is we go
7 right into phase two if one is necessary. So there won't be
8 a break unless it's late in the evening, I suppose.

9 Once the question has been answered, I will inform
10 the jury: Now that you have answered that question, you'll
11 need to decide what, if any, damages will be given. You'll
12 be allowed to present evidence and your argument as it
13 relates to the punitive damages, and then do argument as it
14 relates to the punitive damages.

15 So I share this with you all so that you all
16 should have your witnesses if there is a punitive damages
17 phase.

18 Similarly, hopefully, by Monday afternoon, I will
19 have closing jury instructions, at least a draft, available
20 for you all to review on -- I should say -- I meant to say
21 Tuesday, by Tuesday. Obviously, we need to include some
22 instructions that talk about interrogatory responses,
23 deposition testimony, and I think that's all the additional
24 instructions that come to mind right now, but we'll be
25 working on that between now -- my days are screwed up --

1 between now and Monday because you are coming back on
2 Monday.

3 Any other issues that we need to discuss before we
4 adjourn for the day?

5 Mr. Wiener?

6 MR. WIENER: No, Your Honor.

7 THE COURT: Mr. Taylor?

8 MR. TAYLOR: I don't believe so, Your Honor.

9 THE COURT: So I will see you all on Monday. Have
10 a good weekend, and we'll resume with the trial then.

11 MR. WIENER: Thank you, Your Honor.

12 MR. TAYLOR: Thank you, Your Honor.

13 *(Thereupon, at 4:32 p.m., proceedings adjourned.)*

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CERTIFICATE

*I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
correct transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript format is in conformance with the regulations of
the Judicial Conference of the United States.*

Date: February 12, 2019

Lisa M. Gonzalez
/s/ _____
Lisa M. Gonzalez, U.S. Court Reporter
CSR No. 5920

BY MR. GEBELIN: [14] 4/21 7/1 8/17 13/23 15/12 16/14 17/17 17/24 18/19 20/18 22/10 23/23 37/8 38/4 BY MR. TAYLOR: [8] 25/1 27/3 30/10 33/25 34/8 36/22 59/22 73/17 BY MR. WIENER: [4] 39/11 41/2 53/10 54/9 MR. GEBELIN: [10] 4/7 4/18 8/8 22/3 24/20 33/21 34/3 38/3 38/13 77/20 MR. TAYLOR: [20] 8/13 15/4 22/6 37/3 38/11 53/6 54/6 74/21 76/10 76/15 76/21 92/4 92/7 100/14 101/19 104/22 105/8 105/11 107/7 107/11 MR. WIENER: [46] 36/14 36/18 38/19 40/21 40/25 59/18 74/25 75/3 75/21 75/23 76/4 76/14 77/3 77/23 78/18 79/7 79/17 79/24 80/6 80/17 80/21 81/1 81/17 83/18 84/14 87/16 87/19 88/6 88/20 90/16 90/21 91/3 91/10 91/24 99/14 99/17 100/1 100/9 100/19 101/21 101/24 102/8 105/1 105/4 107/5 107/10 MS. BANI-ESRAILI: [16] 92/10 93/8 93/18 93/24 94/21 95/15 95/25 96/22 97/7 97/12 97/16 97/21 98/8 98/13 98/24 99/8 THE CLERK: [3] 4/11 39/3 39/5 THE COURT: [86] 4/3 4/8 4/14 4/17 6/24 8/5 8/10 8/16 13/22 15/5 16/11 17/15 17/23 18/18 20/9 20/12 22/5 22/7 23/22 24/23 27/2 30/1 33/23 34/5 36/15 36/19 37/5 38/2 38/10 38/12 38/14 38/17 38/21 39/8 40/23 53/8	54/8 59/19 73/16 74/23 75/1 75/4 75/19 75/22 76/2 76/7 76/18 76/23 77/1 77/6 77/22 77/25 80/15 80/20 81/15 81/19 87/14 87/18 90/14 90/20 91/25 92/6 92/8 96/10 96/15 99/10 99/16 99/24 100/4 100/11 100/15 101/15 101/20 101/22 101/25 102/3 102/9 102/16 103/22 104/24 105/2 105/5 105/9 105/14 107/6 107/8 THE WITNESS: [10] 4/13 4/16 20/10 30/3 33/24 34/7 38/16 39/7 53/9 96/13 \$ \$180 [1] 85/16 \$180 million [1] 85/16 \$666,666.66 [2] 16/24 88/16 - -o0o [1] 4/3 -oOo [1] 107/15 / /s [1] 108/15 1 10 [8] 78/19 80/7 80/17 91/12 93/9 93/10 94/23 96/24 100 [1] 1/10 100 percent [1] 61/8 101 [2] 47/18 47/23 11 [7] 17/10 34/10 78/8 78/19 93/19 93/20 98/15 12 [5] 5/5 16/22 84/6 99/1 108/13 12th [1] 53/13 13 [4] 49/5 84/6 84/16 96/24 13th [1] 40/20 14 [10] 77/25 78/7 80/8 80/17 83/10 89/24 90/16 93/20 93/25 97/23 15 [5] 5/5 75/9 76/19 78/7 94/1 16 [6] 78/22 79/2 79/8 85/6	94/1 94/22 17 [7] 79/9 79/18 82/23 88/21 88/22 88/23 88/23 17-CV-00871-AB [1] 1/8 18 [10] 6/7 77/25 77/25 79/2 79/19 79/25 80/7 80/22 91/4 95/16 18-month [1] 6/14 180 million [2] 58/22 86/10 1870 [1] 46/21 1875 [1] 48/1 1880 [2] 2/11 48/8 1885 [1] 48/15 1897 [1] 49/7 19 [5] 96/1 96/2 97/4 97/18 99/1 1902 [1] 50/12 1903 [1] 50/20 1906 [1] 51/10 1910 [1] 51/18 1915 [1] 52/1 1919 [1] 52/8 1921 [1] 55/22 1922 [1] 55/23 1983 [1] 48/23 1:40 [2] 1/17 4/2 1st [2] 1/24 100/23 2 2,000 [2] 87/12 88/2 20 [4] 77/25 80/22 81/2 103/24 2007 [2] 5/11 5/13 2008 [3] 5/11 5/13 25/10 2009 [1] 25/10 201-7600 [1] 2/12 2010 [1] 7/15 2011 [6] 9/10 9/21 31/18 31/19 32/12 33/1 2012 [1] 33/13 2013 [4] 23/12 24/5 84/21 100/23 2015 [2] 52/17 67/24 2016 [57] 9/22 9/25 10/10 15/2 18/2 20/25 22/1 22/3 23/15 23/20 25/21 29/4 29/8 29/9 32/21 33/15 34/17
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